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THE NEW YORKER

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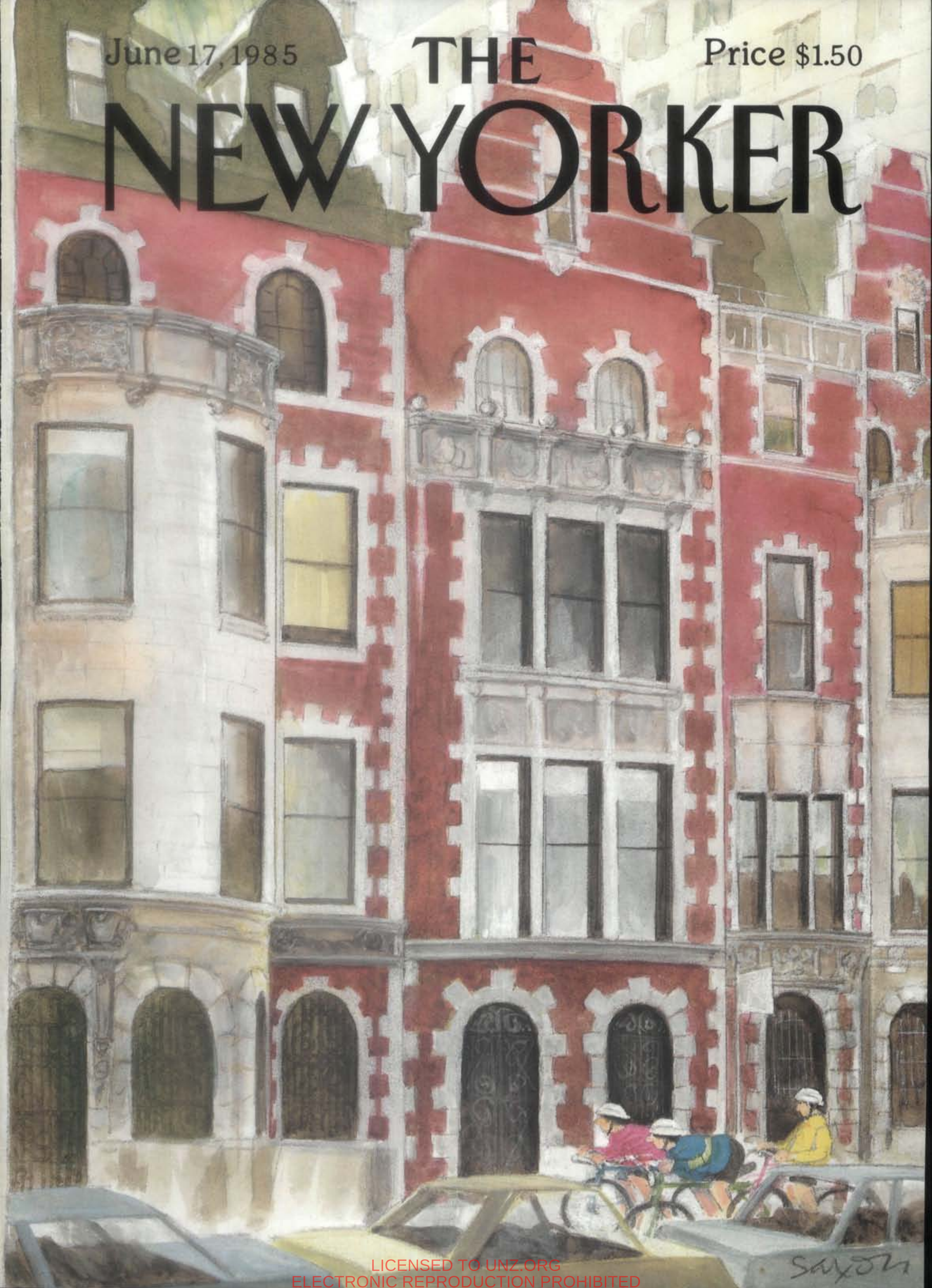

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GOINGS ON ABOUT TOWN

A CONSCIENTIOUS CALENDAR OF EVENTS OF INTEREST

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THE THEATRE

PLAYS AND MUSICALS

American Theatre Exchange—The first in a series of three productions by American regional theatre companies: Heather McDonald's **faulkner's bicycle,** performed by the Yale Repertory Theatre. (Joyce, 175 Eighth Ave., at 19th St. 242-0800. Mondays through Fridays at 8, and Saturdays at 9. Matinées Wednesdays at 2 and Saturdays at 5. Closes Saturday, June 22.)

Aren't We All?—A revival of a smart Mayfair comedy of 1923, written by Frederick Lonsdale. Claudette Colbert, Rex Harrison, Lynn Redgrave, Brenda Forbes, and George Rose find no difficulty bringing it back to life. (Reviewed in our issue of 5/13/85.) (Brooks Atkinson, 256 W. 47th St. 719-4099. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.)

Arms and the Man—A sadly ramshackle production of a sunny early Shaw play, worth attending only because of an admirable performance by Kevin Kline. (6/10/85) (Circle in the Square, 50th St. west of Broadway. 239-6200. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.)

As Is—This touching play by William M. Hoffman concerns a personable young homosexual who is afflicted with AIDS, and is also a documentary of sorts about his milieu in this city. The lively, impressionistic performance was directed by Marshall W. Mason, and the acting by the large cast, several of whom appear in multiple roles, is just right. With Jonathan Hogan and Jonathan Hadary. (3/25/85) (Lyceum, 149 W. 45th St. 239-6200. Nightly, except Sundays, at 8. Matinées Wednesdays and Saturdays at 2.)

Big River—A musical about Huckleberry Finn and Jim and their adventures on the Mississippi, with a book by William Hauptman and music and lyrics by Roger Miller. The large cast is full of charm and so is the scenery, by Heidi Landesman. (5/13/85) (Eugene O'Neill, 230 W. 49th St. 246-0220. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.)

Biloxi Blues—The second comedy—"Brighton Beach Memoirs" was the first—in which we are invited to follow Neil Simon's years of growing up and becoming a writer. Matthew Broderick as young Simon has a natural charm that keeps us from noticing how sticky-saintly-smarmy the character is. (4/8/85) (Neil Simon, 250 W. 52nd St. 757-8646. Nightly, except Sundays, at 8. Matinées Wednesdays and Saturdays at 2.)

Childhood and **For No Good Reason**—Whatever Nathalie Sarraute's contribution to French letters may be, her contribution to the theatre—as made manifest in these two one-acters adapted from her work—is zero. (Samuel Beckett, 410 W. 42nd St. 594-2826. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2:30, and Sundays at 3. Closes Sunday, June 30.)

Curse of the Starving Class—A revival of a play by Sam Shepard. (Intar, 420 W. 42nd St. 279-4200. Wednesdays through Saturdays at 8, and Sundays at 7:30. Matinées Saturdays at 2 and Sundays at 3.)

Dames at Sea—A revival of the musical by Jim Wise (score) and George Haimsohn and Robin Miller (book and lyrics). Opens Wednesday, June 12. (Lambs, 130 W. 44th St. 997-1780. Opening-night curtain at 6:45; thereafter, Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.)

Doubles—A comedy by David Wiltse about some fiercely competitive but not very interesting tennis players in far-off Norwalk, Connecticut. With John Cullum, Ron Leibman, Tony Roberts, and Austin Pendleton. The director is Morton Da Costa. (5/20/85) (Ritz, 219 W. 48th St. 582-4022. Nightly, except Sundays, at 8. Matinées Wednesdays and Saturdays at 2.)

Ensemble Studio Theatre—Final performances of a festival of one-act plays. "North of Providence," by Edward Allan Baker; "The Semi-Formal," by Louisa Jerauld; "Painting a Wall," by David Lan; and "The Happy Hour," by Shel Silverstein: Wednesday through Friday, June 12-14, at 7:30; Saturday, June 15, at 7 and 10; Sunday, June 16, at 3 and 7; and Monday, June 17, at 7:30. (549 W. 52nd St. 247-3405.)

Fighting International Fat—Jonathan Reynolds, one of our most gifted and humorous dramatists, here tries a satire on evangelism, as it applies to losing weight in this country. The play falls flat because Mr. Reynolds seems to have lost control of his ideas, which are sparse, in any case. The acting, under David Trainer's direction, is fine, especially that of Stephen Ahern, Ann McDonough, and Lisa Banes. (Reviewed in this issue.) (Playwrights Horizons, 416 W. 42nd St. 279-4200. Tuesdays through Fridays at 8; Saturdays at 7 and 10; and Sundays at 7. Matinées Sundays at 3.)

The Foreigner—A very funny play by (and with) Larry Shue, with good performances by every single member of the company, most notably by Kevin Geer as a lovable half-wit. Jerry Zaks was the admirable director. (11/19/84) (Astor Place Theatre, 434 Lafayette St., near Astor Pl. 254-4370. Tuesdays through Fridays at 8; Saturdays at 7 and 10; and Sundays at 7. Matinées Sundays at 3.)

Grind—Ben Vereen, Leilani Jones, Timothy Nolen, and Stubby Kaye in an eloquent and troubling musical about a Chicago burlesque house in 1933. The book is by Fay Kanin, the music is by Larry Grossman, and the lyrics are by Ellen Fitzhugh. Harold Prince directed. (4/22/85) (Mark Hellinger, 237 W. 51st St. 757-7064. Nightly, except Sundays, at 8. Matinées Wednesdays and Saturdays at 2.)

Hannah Senesh—A monologue based on the diaries and poems of the Zionist heroine. Lori Wilner is the monologuist. Written and directed by David Schechter, with music by Steven Lutvak, Elizabeth Swados, and Mr. Schechter. (Cherry Lane, 38 Commerce St. 989-2020. Wednesdays through Fridays at 8, and Saturdays at 7 and 10. Matinées Wednesdays at 2:30, and Sundays at 2:30 and 5:30.)

I'm Not Rappaport—Herb Gardner's rather synthetic, though often entertaining, comedy about two old men who share a bench in Central Park is given an expert performance by Cleavon Little and Judd Hirsch. (Reviewed in this issue.) (American Place, 111 W. 46th St. 869-4731. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.)

Joe Egg—A superb performance of Peter Nichols' matchless bleak comedy. Jim Dale and Stockard Channing are the parents of the

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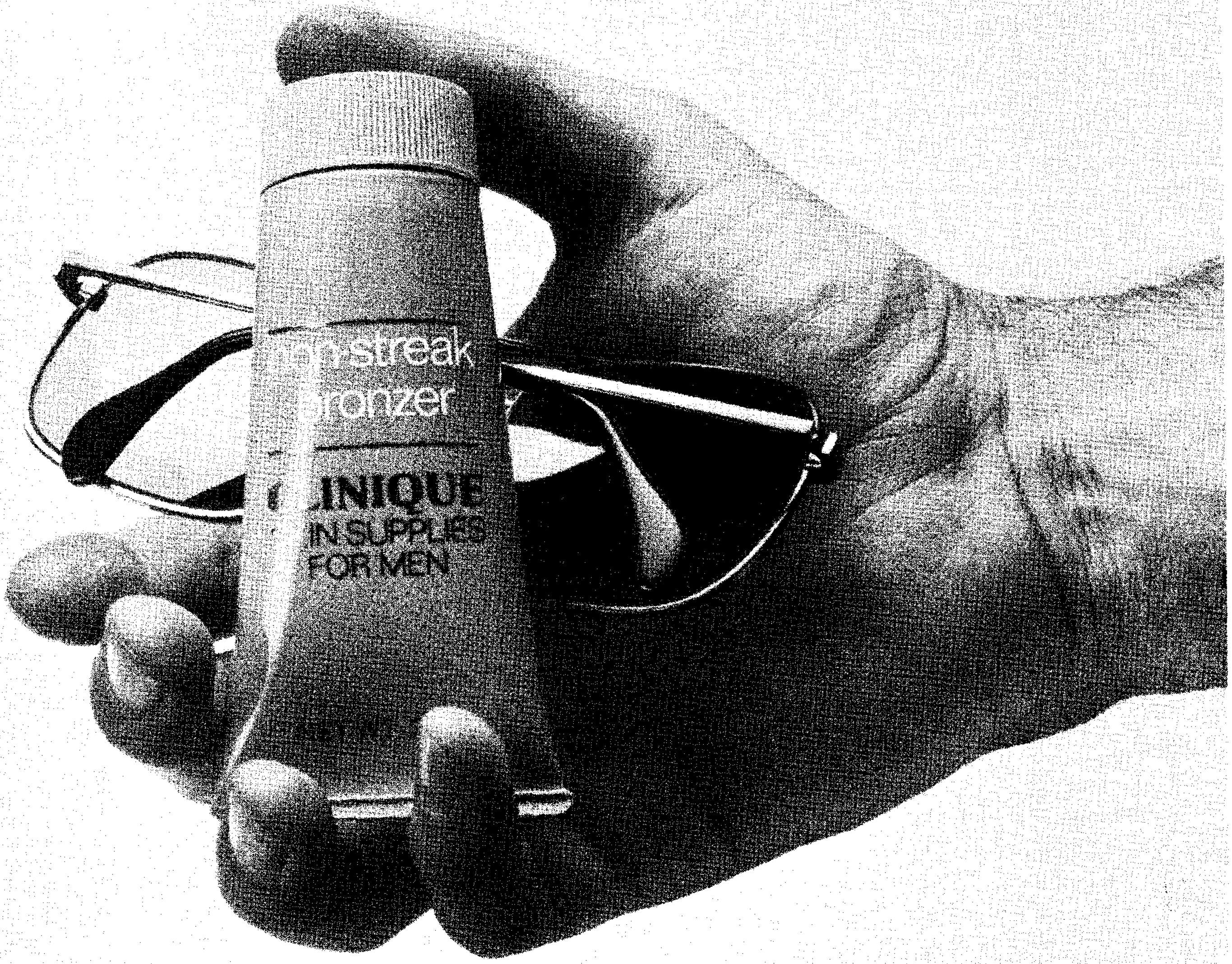

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GOINGS ON ABOUT TOWN

hopelessly brain-damaged child, and they are supported by John Tillinger, Margaret Hilton, Joanna Gleason, and Tenney Walsh. Arvin Brown was the director. (1/14/85) (Longacre, 220 W. 48th St. 239-6200. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3. Closes Saturday, June 22.)

Juno's Swans—Betty Buckley, Daniel Hugh-Kelly, and Mary Kay Place in a comedy by E. Katherine Kerr. Directed by Marsha Mason. (McGinn/Cazale, Broadway at 76th St. 944-9300. Nightly at 8. Matinée Saturday at 2. Closes Saturday, June 15.)

The King and I—Yul Brynner is as charming as ever, and so is the show that he has been starring in since the Civil War. Attendance is obligatory. (1/14/85) (Broadway Theatre, Broadway at 53rd St. 239-6200. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3. Closes Sunday, June 30.)

Ladies and Gentlemen, Jerome Kern!—Delores Hall in a revue of the composer's songs written for stage and screen. (Harold Clurman, 412 W. 42nd St. 594-2370. Wednesdays through Saturdays at 8, and Sundays at 7. Matinées Saturdays and Sundays at 3.)

Leader of the Pack—Ellie Greenwich was a popular songwriter of the pre-Beatles era. Here are her songs, as well as Ellie herself. (4/22/85) (Ambassador, 215 W. 49th St. 239-6200. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.)

Lies and Legends: The Musical Stories of Harry Chapin—A musical entertainment using works by the late composer. (Village Gate, 160 Bleecker St. 473-7270. Tuesdays through Fridays at 8; Saturdays at 7 and 10; and Sundays at 7. Matinées Sundays at 3.)

The Marriage of Bette and Boo—Christopher Durang's very funny, mordant satire on a Catholic *mariage à la mode*, with the playwright himself as the luckless son of the couple being examined. The performance, under Jerry Zaks' direction, is absolutely first-rate. (5/27/85) (Public, 425 Lafayette St. 598-7150. Nightly, except Mondays, at 8. Matinées Saturdays and Sundays at 3.)

Mayor—A musical based on the best-seller of the same name by Edward I. Koch. With a score and lyrics by Charles Strouse and a book by Warren Leight. (Top of the Gate, 160 Bleecker St. 982-9292. Tuesdays through Fridays at 8; Saturdays at 7 and 10; and Sundays at 7. Matinées Sundays at 3.)

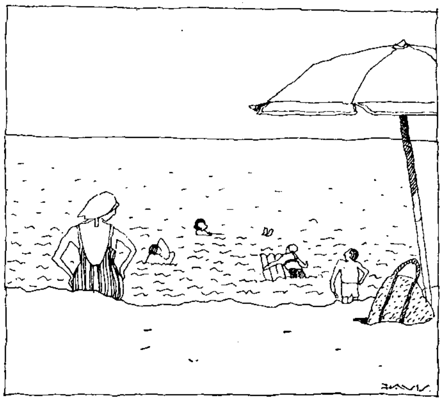
Miss Universal Happiness—A play written and directed by Richard Foreman. (Performing Garage, 33 Wooster St. 966-3651. Tuesdays through Fridays at 8; Saturday, June 15, at 7 and 10; and final performance Saturday, June 22, at 3.)

Negro Ensemble Company—A spirited revival of the fine **ceremonies in dark old men,** by Lonne Elder III, with Douglas Turner Ward again doubling as director and leading man. (6/10/85) (Theatre Four, 424 W. 55th St. 246-8545. Tuesdays through Fridays at 8; Saturdays at 8:30; and Sundays at 7. Matinées Saturdays at 3 and Sundays at 2:30.)

The Normal Heart—An interminable, trashy non-play about AIDS, and its victims in the homosexual community of this city, who are compared to the Jews under the Nazis. The names Hitler, Roosevelt, Morgenthau, and, eventually, Mayor Koch are dropped with equal contempt. The evening is an insult to its audience and, what is far more serious, to the sufferers from this dreadful, seemingly hopeless disease. (Public, 425 Lafayette St. 598-7150. Nightly, except Mondays, at 8. Matinées Saturdays and Sundays at 3.)

The Odd Couple—A revised version of Neil Simon's comedy, starring Rita Moreno and Sally Struthers. Directed by Gene Saks. (Broadhurst, 235 W. 44th St. 239-6200. Tuesdays through Saturdays, except Thursday, June 13, at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.)

Orphans—A melodrama, by Lyle Kessler, about two young brothers—one a street thief and pickpocket, the other an apparent dimwit—and an older mobster who takes over their house and their lives. The first act works quite well, the second is merely serviceable, but what really counts is the performance under the dynamic direction of Gary Sinise. The actors are Kevin Anderson, Terry Kinney, and John Mahoney, and the show is an import from the Steppenwolf Company of Chicago. (5/20/85) (Westside Arts, 407 W. 43rd St. 541-8394. Tuesdays through Fridays at 8, and Saturdays at 7 and 10. Matinées Wednesdays at 2 and Sundays at 3.)



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Penn & Teller—A sublime combination of conjuring and comedy. Penn Jillette does the talking; Teller is silent. (5/6/85) (Westside Arts, 407 W. 43rd St. 541-8394. Wednesdays and Thursdays at 8; Fridays at 8 and 11; Saturdays at 7 and 10; and Sundays at 7. Matinées Sundays at 3.)

Rat in the Skull—The scene is a police station in London, where an Irish Catholic terrorist is questioned by two English cops and questioned and tormented and smothered in words by a member of the Royal Ulster Constabulary. The play, by Ron Hutchinson, is an import from the Royal Court Theatre; it is very well acted, under the expert direction of Max Stafford-Clark. (6/3/85) (Public, 425 Lafayette St. 598-7150. Nightly, except Mondays, at 8. Matinées Saturdays and Sundays at 3. Closes Sunday, June 23.)

The Return of Herbert Bracewell—The admirable Milo O'Shea is lightly disguised as a failed actor in his eighties, who recites speeches and scenes from the parts he never got, in this monologue with interruptions, lightly disguised as a play. Frances Sternhagen, as the actor's wife, is the tactful interrupter. Geraldine Fitzgerald directed. (6/3/85) (Chelsea Playhouse, 519 W. 23rd St. 243-0992. Tuesdays through Fridays at 8; Saturdays at 7 and 10; and Sundays at 7:30. Matinées Sundays at 3.)

Singin' in the Rain—A musical based on the 1952 film, with a book adapted by Betty Comden and Adolph Green from their original screenplay, and songs by Nacio Herb Brown and Arthur Freed. Directed and choreographed by Twyla Tharp. Previews through Wednesday, June 19. Opens officially on Thursday, June 20. (Gershwin, 51st St. west of Broadway. 586-6510. Nightly, except Sundays, at 8; opening-night curtain at 6:30. Matinées Wednesdays and Saturdays at 2.)

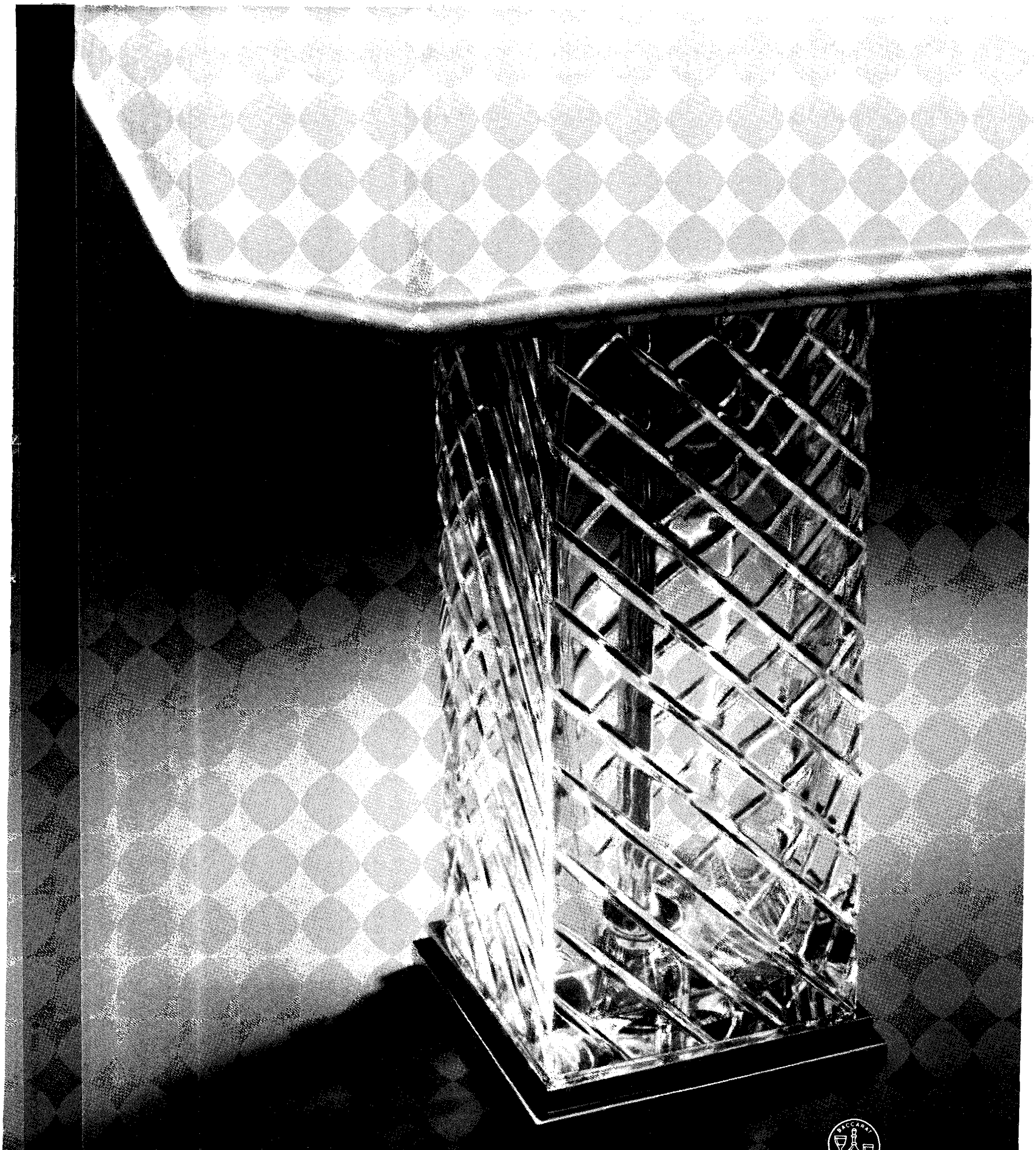
Submariners—A comedy by Tom McClenaghan. (Hudson Guild Theatre, 441 W. 26th St. 760-9810. Wednesday through Saturday at 8, and Sunday at 7. Matinées Saturday and Sunday at 3. Closes Sunday, June 16.)

3 Guys Naked from the Waist Down—John Kassir, Scott Bakula, and Jerry Colker play three standup comedians who leave New York for Hollywood in this satiric and most original musical comedy. Mr. Colker wrote the book and lyrics, and Michael Rupert wrote the bountiful, engaging score. The effective scenery, costumes, and lighting were by Clarke Dunham, Tom McKinley, and Ken Billington. (2/18/85) (Minetta Lane, 18-22 Minetta Lane, east of Sixth Ave., between W. 3rd and Bleecker Sts. 420-8000. Tuesdays through Fridays at 8; Saturdays at 7 and 10:15; and Sundays at 7. Matinées Sundays at 3.)

Tracers—The eight good actors are Vietnam veterans, and the effective play is based on actual war experiences. It was conceived and directed by John DiFusco, and it is accompanied throughout by rock music. (2/4/85) (Public, 425 Lafayette St. 598-7150. Nightly, except Mondays, at 8. Matinées Wednesdays and Sundays at 3.)

The Voice of the Turtle—A revival of John van Druten's 1943 comedy, with Chris Sarandon, Patricia Elliott, and J. Smith-Cameron. (Roundabout, 100 E. 17th St. 420-1883. Tuesdays through Saturdays at 8. Matinées Wednesdays, Saturdays, and Sundays at 2.)

Long Runs—**brighton beach memoirs:** Neil Simon's autobiographical comedy. (46th Street Theatre, 226 W. 46th St. 221-1211. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.) . . . **la cage aux folles:** A big, handsomely designed and handsomely costumed musical starring George Hearn and Van Johnson. The book, by Harvey Fierstein, is sentimental nonsense, but the music, by Jerry Herman, is pleasantly tuneful. Everybody else in New York intends to see the show, so why not you? (Palace, Broadway at 47th St. 757-2626. Nightly, except Sundays, at 8. Matinées Wednesdays and Saturdays at 2.) . . . **cats:** A musical version of T. S. Eliot's "Old Possum's Book of Practical Cats." Music by Andrew Lloyd Webber, choreography by Gillian Lynne, and direction (and some lyrics) by Trevor Nunn. A superb spectacle, which may run for many more years and give cats the right to vote and hold office. (Winter Garden, Broadway at 50th St. 239-6200. Nightly, except Sundays, at 8. Matinées Wednesdays and Saturdays at 2.) . . . **a chorus line:** A group of young dancers audition for a handful of chorus jobs in a show not yet in rehearsal, and by the time the evening is over we know everything about all of them. (Shubert, 225 W. 44th St. 239-6200. Nightly, except Sundays, at 8. Matinées Wednesdays and Saturdays at 2.) . . . **dreamgirls:** Michael Bennett's whiz-bang and totally synthetic musical about show biz. The breeze is terrific. (Imperial, 249 W. 45th St. 239-6200. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.) . . . **the fantasticks:** 10,456 performances so far. (Sullivan Street Playhouse, 181 Sullivan St., at Bleecker St. 674-3838. Tuesdays through Fridays at 8; Saturdays at 7 and 10; and Sundays at 7:30. Matinées Sundays at 3.) . . . **fool for love:** Sam Shepard's play—mysterious, funny, and beautiful—is about two battling, loving lovers in a motel room at the edge of the Mojave Desert and about many other matters as well. Deborah Strang and George Gerdes have the leading roles. Mr. Shepard directed. (Douglas Fairbanks, 432 W. 42nd St. 239-4321. Tuesdays through Fridays at 8; Saturdays at 7:30 and 10; and Sundays at 8. Matinées Thursdays at 3.) . . . **42nd street:** Pleasantly old-fashioned choreography by the late Gower Champion and a few classic songs enliven an otherwise inert pastiche of the Warner Brothers movie that made Ruby Keeler a star. (Majestic, 245 W. 44th St. 239-6200. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.) . . . **isn't it romantic:** A spirited production of Wendy Wasserstein's sometimes painful but always witty comedy about a pair of female "best friends" at age twenty-eight, and especially about the trials of one of them, Janie Blumberg. (Lucille Lortel, 121 Christopher St. 924-8782. Tuesdays through Fridays at 8; Saturdays at 7 and 10; and Sundays at 7. Matinées Sundays at 3.) . . . **little shop of horrors:** Based on Roger Corman's 1960 horror quickie about a man-eating plant, this exuberant, jokey musical is wholly free of camp. The score is by Alan Menken, and Howard Ashman directed and wrote the book and lyrics. Martin P. Robinson designed the menacing plant. (Orpheum, 126 Second Ave., at 8th St. 239-6200. Tuesdays through Fridays at 8; Saturdays at 7 and 10; and Sundays at 7:30. Matinées Sundays at 3.) . . . **oh! calcutta!:** A collection of short sketches that purport to give us a re-



Baccarat

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RICH'S JOHN WANAMAKER BLOOMINGDALE'S

GOINGS ON ABOUT TOWN

freshing view of sex and do not. (Edison, 240 W. 47th St. 757-7164. Mondays through Fridays at 8; Saturdays at 7 and 9:30; and Sundays at 7. Matinées Sundays at 3.) . . . **SUNDAY IN THE PARK WITH GEORGE:** Harry Groener and Maryann Plunkett as Georges Seurat and his model/mistress, as Seurat brings into existence his painting of Parisians taking the air on the island of La Grande Jatte. Music and lyrics by Stephen Sondheim, book and direction by James Lapine. (Booth, 222 W. 45th St. 239-6200. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.) . . . **THE TAP DANCE KID:** A charming, diligent cast can do little to bring life to this conventional examination of a black family's ambitions. The dancing is splendid. (Minskoff, 45th St. west of Broadway. 869-0550. Tuesdays through Saturdays at 8. Matinées Wednesdays and Saturdays at 2, and Sundays at 3.)

MISCELLANY

FORBIDDEN BROADWAY 1985—A musical satire of Shubert Alley denizens. The lyrics to the song parodies are by Gerard Alessandrini. (Palsson's Upstairs, 158 W. 72nd St. 595-7400. Tuesdays through Thursdays at 8:30; Fridays and Saturdays at 8:30 and 11:30; and Sundays at 8:30.)

DANCE

NEW YORK CITY BALLET—Tentative schedule—Wednesday evening, June 12: "Square Dance," "Poulenc Sonata," and "The Four Temperaments." . . . ¶ Thursday evening, June 13: "The Four Temperaments," "In Memory of . . ." (première), and "Tchaikovsky Suite No. 3." . . . ¶ Friday evening, June 14: "Seven by Five," "Andantino," "Liebeslieder Walzer," and "Stravinsky Violin Concerto." . . . ¶ Saturday matinée, June 15: "Allegro Brillante," "Liebeslieder Walzer," and "Stravinsky Violin Concerto." . . . ¶ Saturday evening, June 15: "The Four Temperaments," "The Cage," "Pas de Deux," and "The Four Seasons." . . . ¶ Sunday matinée, June 16: "Allegro Brillante," "Liebeslieder Walzer," and "Symphony in Three Movements." . . . ¶ Sunday evening, June 16: "Square Dance," "In Memory of . . . ," and "Tchaikovsky Suite No. 3." . . . ¶ Tuesday evening, June 18: "Allegro Brillante," "Andantino," "In Memory of . . . ," and "Liebeslieder Walzer." . . . ¶ Wednesday evening, June 19: "Concerto Barocco," "The Cage," "Other Dances," and "The Four Temperaments." . . . ¶ Thursday evening, June 20: "Square Dance," "In Memory of . . . ," and "The Four Seasons." . . . ¶ Friday evening, June 21: "Allegro Brillante," "Andantino," "Poulenc Sonata," and "Symphony in Three Movements." . . . ¶ Saturday matinée, June 22: "Allegro Brillante," "Afternoon of a Faun," "Other Dances," and "Stravinsky Violin Concerto." . . . ¶ Saturday evening, June 22: "Concerto Barocco," "The Cage," "Andantino," and "Symphony in Three Movements." (New York State Theatre. 870-5570. Tuesdays through Saturdays at 8, and Sundays at 7. Matinées Saturdays at 2 and Sundays at 1. Through Sunday, June 23.)

AMERICAN BALLET THEATRE—Final performances of the engagement—Wednesday, June 12, at 2 and 8: "Cinderella." . . . ¶ Thursday and Friday, June 13-14, at 8, and Saturday, June 15, at 2 and 8: "Don Quixote [Kitri's Wedding]." (Metropolitan Opera House. 362-6000.)

DANCE THEATRE OF HARLEM—Opening performances of a two-week engagement that will run through Saturday, June 29—Monday, June 17, at 7:30: "Stars and Stripes" and "Giselle." . . . ¶ Tuesday, June 18, at 8, and Saturday, June 22, at 2 and 8: "Troy Game" and "Giselle." . . . ¶ Wednesday through Friday, June 19-21, at 8: "Serenade," "Voluntaries," and "Firebird." (Metropolitan Opera House. 362-6000.)

KEI TAKEI'S MOVING EARTH—A two-week engagement. (La Mama, 74A E. 4th St. 475-7710. Wednesday through Sunday, June 12-16, and Tuesday through Sunday, June 18-23, at 7:30.)

COURT DANCE COMPANY—A program of nineteenth-century ballroom dances. (Marymount Manhattan Theatre, 221 E. 71st St. Thursday through Saturday, June 13-15, at 8, and Sunday, June 16, at 3. For tickets, call 279-4200.)

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NIGHT LIFE

(A highly arbitrary listing in which bold-face type is used to pick out a few of the more notable performers in town. . . . ¶ Musicians and night-club proprietors live complicated lives that are subject to last-minute change; it is therefore always advisable to call ahead.)

ALGONQUIN HOTEL, 59 W. 44th St. (840-6800)—**JULIE WILSON,** a wonderfully convincing singer, is performing Cole Porter songs in the Oak Room Tuesdays through Saturdays at nine-fifteen and eleven-fifteen. Sundays, Buck Buchholz presides over the Rose Room piano from five-thirty to eleven. Dining.

ANGRY SQUIRE, 216 Seventh Ave., at 23rd St. (242-9066)—Jazz in a lively Chelsea bar and restaurant bedecked with nautical stuff. Friday and Saturday, June 14-15, will belong to **JAKI BYARD,** the free and stride pianist, and his trio. Sets at ten, eleven-thirty, and one.

BALLROOM, 253 W. 28th St. (244-3005)—**BLOSSOM DEARIE** is here, singing in her small, uncomplicated, diction-perfect voice. Early-evening concerts Wednesdays through Saturdays at six-thirty.

BLUE NOTE, 131 W. 3rd St., near Sixth Ave. (475-8592)—According to the barman, there've been scads of clubs at this address, going all the way back to speakeasy days. Tenor saxophonist **GATO BARBIERI** heads up his group through Sunday, June 16; the altogether charming hot-jazz violinist **STÉPHANE GRAPPELLI** will arrive on Tuesday, June 18. On Monday, June 17, the podium will be turned over to clarinettist **PERRY ROBINSON'S** Licorice Factory All-Stars. Music from nine. **TED CURSON,** a jubilant hard-bop trumpeter, conducts after-hours (real late, after two in the morning) jam sessions every night but Monday. Dining.

BOTTOM LINE, 15 W. 4th St., at Mercer St. (228-6300)—The schedule: Thursday, June 13, soul singers **SAM & DAVE** and **FOURTEEN KARAT SOUL;** Friday and Saturday, June 14-15, **DAVID BROMBERG;** and Friday and Saturday, June 21-22, Scottish folkie John Martyn and comedian Chris Rush. Shows Sundays through Thursdays at eight and eleven, and Fridays and Saturdays at eight-thirty and eleven-thirty. Dining.

BRADLEY'S, 70 University Pl., at 11th St. (228-6440)—A great view from a bar stool (unless there are a lot of standees, which is usually the case) of first-rate jazz duos. Pianist **JOHN HICKS** and bassist **WALTER BOOKER** perform through Saturday, June 15; starting Monday, June 17, pianist **KIRK LIGHTSEY** and bassist **RUFUS REID** will drop by nightly. Music from nine-forty-five.

CARLYLE HOTEL, Madison Ave. at 76th St. (744-1600)—**BOBBY SHORT** is back with his sidekicks, **BEVERLY PEER** and **ROBBIE SCOTT,** in the Café Carlyle Tuesdays through Saturdays at ten and midnight. **VINCE GIORDANO** & the Nighthawks offer up dance music on Sundays and Mondays from nine to one. Dining. . . . **BARBARA CARROLL** sings at the piano in the Bemelmans Bar from ten Tuesdays through Saturdays.

CBGB & OMFUG, 315 Bowery, at Bleecker St. (982-4052)—Rock and roll as a garage industry. Monday is showcase night. Music from long after nine-thirty.

EAGLE TAVERN, 355 W. 14th St., at Ninth Ave. (924-0275)—Bluegrass, old-time-string-band, and Irish music is the fare, along with pitchers of beer. Saturday, June 15, Del McCory and his band; Wednesday, June 19, Liam O'Flynn & Paddy Glackin; and Saturday, June 22, fiddler **MATT GLASER,** with mandolinist **ANDY STATMAN** and bassist Marty Confurius. There is Irish music on Mondays and Fridays as well. Music from eight on Wednesdays and Thursdays and from nine Mondays, Fridays and Saturdays.

EDDIE CONDON'S, 144 W. 54th St. (265-8277)—The surviving home on the block for traditional small-band jazz. Music nightly from eight-thirty. Dining.

FAT TUESDAY'S, 190 Third Ave., at 17th St. (533-7902)—**SUSANNAH MC CORKLE** sings here through Sunday, June 16, and on Tuesday, June 18, a tribute to the Cotton Club era will commence, with tenor saxophonist **SCOTT HAMILTON'S** quintet, trumpeter **WARREN VACHÉ,** and vocalist **MAXINE SULLIVAN.** On Mondays, guitarist-inventor **LES PAUL,** the Thomas Edison of reverb, leads a trio. Sets begin Sundays through Thursdays at nine, and Fridays and Saturdays at eight. Dining.

FOLK CITY, 130 W. 3rd St., near Sixth Ave. (254-8449)—Folkies, rockers, folk-rockers, and comics. Thursday, June 13, Fred Small; Friday, June 14, former Band members bassist **RICK DANKO** and keyboardist **RICHARD MANUEL;** Tuesday, June 18, blues singer **JOHN HAMMOND;** Wednesday, June 19, the **FLESHTONES** and the A-Bones; and Thursday and Friday, June 20-21, Ferron. Sundays are comedy nights, and Mondays are hootenanny nights. Shows usually begin at eight-thirty and eleven-thirty.

GREGORY'S, 1149 First Ave., at 63rd St. (371-2220)—Alicia Sherman sings with the Peter Madsen duo Wednesdays through Sundays; on Mondays pianist Baba Motta and bassist John Belzaguy team up; and Tuesdays belong to guitarist **CHUCK WAYNE'S** trio. All these groups begin about ten.

HANRATTY'S, 1754 Second Ave., at 91st St. (289-3200)—A back-room restaurant with a view of pianist **DICK WELLSTOOD** through Saturday, June 15; starting Tuesday, June 18, pianist **DAVE MC KENNA** will take charge. Sundays are claimed by pianist Keith MacDonald, and Mondays by **DICK HYMAN.** Music Sundays through Thursdays from eight-thirty, and Fridays and Saturdays from nine.

KNICKERBOCKER SALOON, 33 University Pl., at 9th St. (228-8490)—A bar and restaurant in the piano-bass district. **ROLAND HANNA,** who is sometimes clipped and percussive, at other times undulating and romantic, but at all times a powerhouse of a pianist, can be heard here Tuesdays through Saturdays. Music from nine-thirty.

LONE STAR CAFÉ, 61 Fifth Ave., at 13th St. (242-1664)—A spirited, noisy, crowded hangout for expatriate Texans and French tourists, where they celebrate Texas Independence Day but not Bastille Day. Thursday, June 13, R. & B.-ists **WHO IT IS;** Friday, June 14, Whitewater and B. Willie Smith; Saturday, June 15, Whitewater and Tommie Joe White; Monday, June 17, Schooner Fare; Tuesday, June 18, the Bellamy Brothers and Gus Hardin; and Wednesday and Thursday, June 19-20, **JERRY JEFF WALKER.** Music from about eight-thirty nightly. Dining.

LUSH LIFE, 184 Thompson St., at Bleecker St. (228-3788)—A simple, unpretentious jazz club that has an exciting, established feel to it. **MC COY TYNER,** one of the most influential pianists on the scene, works with bassist **RON CARTER** through Sunday, June 16. Sets begin Sundays through Thursdays at eight-thirty, and Fridays and Saturdays at nine. Dining.

MICHAEL'S PUB, 211 E. 55th St. (758-2272)—**MILT HINTON'S** 75th-Birthday Jazz Party is the pro-

They didn't bring riches.
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gram here, with Mr. Hinton celebrating on bass, **BOBBY ROSENGARDEN** on drums, and a bunch of visiting musician friends playing their respects. Music Tuesdays through Saturdays at nine-thirty and eleven-thirty. On Monday nights from nine-thirty to midnight, Woody Allen is likely to show up to play celebrity clarinet with a New Orleans-style sextet. Dining. Closed Sundays.

MIKELL'S, 760 Columbus Ave., at 97th St. (864-8832)—A worthy jazz and rhythm-and-blues haunt. Wednesday, June 12, Skin; Thursday, June 13, flutist Sherry Winston; Friday and Saturday, June 14-15, violinist Noel Pointer; Monday, June 17, **JUMP STREET;** Tuesday and Wednesday, June 18-19, jazz harpist **CORKY HALE;** and Thursday, June 20, Brothers, Cousins, and Friends. Music from about ten until two. Dining.

RAINBOW ROOM, 30 Rockefeller Plaza. (757-9090)—**PANAMA FRANCIS & THE SAVOY SULTANS** play absolutely uplifting swing music so infectiously that it's downright impossible not to want to Lindy to it. Shows Tuesdays through Thursdays from seven to one; Fridays and Saturdays from eight to two; and Sundays from six to midnight. Dining and dancing.

RITZ, 119 E. 11th St. (254-2800)—A big, fancy (but the appropriate dress is black sneakers rather than black tie) thirties ballroom, complete with eighties video, that presents past, present, future, past-perfect, present-perfect, future-perfect, and imperfect forms of rock and roll. Wednesday, June 12, Run-D.M.C.; Thursday, June 13, Aku-Aku and Broken Arrow; Monday and Tuesday, June 17-18, singer **GREGG ALLMAN** and singer, songwriter, and pianist **LEON RUSSELL.** Shows tend to begin sometime after eleven. Dancing.

ST. REGIS-SHERATON, Fifth Ave. at 55th St. (753-4500)—In the King Cole (as in Old, not Nat) Room, **JOE BUSHKIN** plays piano and sings, husky-voiced, Mondays through Thursdays at nine, and Fridays and Saturdays at nine and eleven. Dining.

SEVENTH AVENUE SOUTH, 21 Seventh Ave. S., at Leroy St. (242-4694)—The jazz, funk, fusion, Latin-jazz lineup: Wednesday, June 12, Geoffrey McCabe; Thursday, June 13, Steve Bargonetti; Friday and Saturday, June 14-15, the **BILL EVANS–MIKE STERN** All-Star band; Sunday, June 16, Japanese trumpeter Tiger Okoshi; Monday, June 17, electric pianist **DOM SALVADOR'S** sextet; Tuesday, June 18, Minu Jackson; Wednesday, June 19, Vladimir Horunzhy; Thursday, June 20, pianist **JIM MC NEELY'S** trio; and Friday and Saturday, June 21-22, Joe Cool. Music from nine-thirty.

SOUNDS OF BRAZIL, 204 Varick St., at W. Houston St. (243-4940)—This place offers the kind of authentic Brazilian (and African) exuberance that makes it feel like *carnaval* every weekend (and during the week isn't exactly dullsville, either). Wednesday and Thursday, June 12-13, the great percussionist **OLATUNJI;** Friday and Saturday, June 14-15, **LOREMIL MACHADO & THE SARAVA BAHIA BAND;** Sunday, June 16, **THIAGO DE MELLO** and his ten-piece band, **AMAZON;** Tuesday through Thursday, June 18-20, Judy Mowatt; and Friday and Saturday, June 21-22, **MIKATA.** Closed Mondays.

SWEET BASIL, 88 Seventh Ave. S., at Bleecker St. (242-1785)—Crowded and convivial. South African pianist **ABDULLAH IBRAHIM** leads **EKAYA,** his lilting septet made up of **CARLOS WARD, RICKY FORD, CHARLES DAVIS, DICK GRIFFIN, CECIL MC BEE,** and **BEN RILEY,** Tuesdays through Sundays. On Monday, June 17, bluesy singer **DAKOTA STATON** will perform with her backing crew. Shows from about ten. Dining.

TRAMPS, 125 E. 15th St. (777-5077)—Your simple, basic blues and R. & B. hangout. Thursday, June 13, Chicago blueswoman **KOKO TAYLOR;** Friday and Saturday, June 14-15, Chicago-blues singer and guitarist **OTIS RUSH;** and Friday and Saturday, June 21-22, **CHARLES BROWN,** the smoothy R. & B. singer and red-hot piano pounder, and the Blazers. Music after ten.

VILLAGE GATE, 160 Bleecker St. (475-5120)—On Mondays, exciting, adept salsa bands take over the big downstairs room at nine to play for excitable audiences. On June 17, **TITO PUENTE & HIS LATIN JAZZ ENSEMBLE, LOUIE RAMIREZ & RAY DE LA PAZ,** and vibraharpist **WARREN CHIASSON** will all participate in a salute to Cal Tjader. . . . ¶ Meanwhile, out on the Terrace, pianist **RAY BRYANT** and a bassist can be heard nightly, except Mondays, after nine-thirty. Jazz harpist **DAPHNE HELLMAN** also drops in on Tuesdays. Sets begin at nine-thirty.

VILLAGE VANGUARD, 178 Seventh Ave. S., at 11th St. (255-4037)—The hallowed basement of jazz. Guitarist **KENNY BURRELL** heads up a trio through Sunday, June 16, and on Tuesday, June 18, saxophonist **JAMES MOODY** will bring in his foursome. The **MEL LEWIS BIG BAND** has the floor on Mondays. Music from ten.

WEST END, 2911 Broadway, at 113th St. (666-8750)—Tenor saxophonist **GEORGE KELLY** directs an octet through Saturday, June 15; Sunday through Tuesday, June 16-18, flutist Ali Ryerson's quartet will play; and Wednesday through Sunday, June 19-23, will be given over to singer **DAKOTA STATON.** Music from nine.

ZINNO, 126 W. 13th St. (924-5182)—Guitar-bass duos in a town-house restaurant: **TAL FARLOW** and **GARY MAZZAROPPI** weeknights, and **GENE BERTONCINI** and **MICHAEL MOORE** on Sundays. Music weeknights from eight and Sundays from seven.

JAZZ / FOLK / ROCK CONCERTS, PERSONAL APPEARANCES, ETC.

JAZZ AT THE CENTER—A series of concerts presented by the Henry Street Settlement Music School. Wednesday, June 12, at 7 and 8:30: Count Basie orchestra, with Thad Jones. . . . ¶ Friday, June 14, at 7 and 8:30: Max Roach double quartet. . . . ¶ Saturday, June 15, at 7: Milt Jackson quartet. . . . ¶ Sunday, June 16, at 7: Frank Foster & the Loud Minority, with Vanessa Rubin. (Harry De Jur Henry Street Settlement Playhouse, 466 Grand St. 598-0400.)

EIGHTH ANNUAL NEW YORK WOMEN'S JAZZ FESTIVAL—Wednesday, June 12, at 8, Eiko Ono trio, and at 9:30, Willene Barton quartet. . . . ¶ Thursday, June 13, at 8, Sumi Tonooka trio, and at 9:30, Semenya McCord & trio. . . . ¶ Friday, June 14, at 9, Fostina Dixon & Winds of Change, and at 10:30, Jill McManus quartet. . . . ¶ Saturday, June 15, at 9, Laurha Frankfort trio, and at 10:30, UJC Big Apple Jazzwomen Orchestra. (Jazz Center of New York, 380 Lafayette St. 505-5660.)

JAPANESE AND AMERICAN JAZZ MUSICIANS—A benefit concert involving Billy Taylor, Tiger Okoshi, Frank Foster, Toshiko Akiyoshi, and sixteen others. (Avery Fisher Hall. 874-2424. Thursday, June 13, at 8.)

DAVE GRUSIN AND LEE RITENOUR—With Dave Valentin, Diane Schuur, and Ivan Linns. (Beacon Theatre, Broadway at 74th St. 787-1477. Thursday, June 13, at 8.)

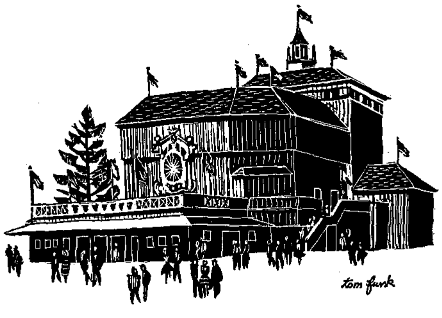
KENNY LOGGINS—Radio City Music Hall, Sixth Ave. at 50th St. 246-4600. Friday and Saturday, June 14-15, at 8.

ROBERT KLEIN—Alice Tully Hall. 362-1911. Saturday, June 15, at 8.

JOANNE BRACKEEN—Carnegie Recital Hall. 247-7800. Wednesday, June 19, at 8.

PAUL YOUNG & THE ROYAL FAMILY—Beacon Theatre. Thursday, June 20, at 8.

KOOL JAZZ FESTIVAL—Opening performances in a ten-day series that will be taking place in various halls around the city; on a Staten Island ferry; on a Hudson River Day Liner; in Waterloo Village, Stanhope, N.J.; and at the Performing Arts Center in Saratoga Springs. For information about tickets to anything, anywhere, call 787-2020. First performance on Friday, June 21, at 5: Marian McPartland, solo piano. (Carnegie Recital Hall.) . . . ¶ Friday, June 21, at 8: Miles Davis band. (Avery Fisher Hall.) . . . ¶ Friday, June 21, at 8: Ella Fitzgerald and the Paul Smith trio. (Carnegie Hall.) . . . ¶ Friday, June 21, at 8: Dizzy Gillespie quintet. (Hudson River Day Liner, Pier 81, Twelfth Ave. at 41st St.) . . . ¶ Friday, June 21, at 8: Walt Dickerson & Carmen Lundy. (St. Peter's Church, Lexington Ave. at 54th St.) . . . ¶ Saturday, June 22, from 4 to 10: "Piano Spectacular," with Dick Hyman, Jane Jarvis, Dick Wellstood, Roger Kellaway, and others. (Waterloo Village.) . . . ¶ Saturday, June 22, at 5:30: George Wallington, solo piano. (Carnegie Recital Hall.) . . . ¶ Saturday, June 22, at 8: Dave Brubeck quartet, Carmen McRae, Jon Hendricks, and others. (Avery Fisher Hall.) . . . ¶ Saturday, June 22, at 8: Paco De Lucia y Su Grupo, Tete Montoliu, and Pegasus. (Carnegie Hall.) . . . ¶ Saturday, June 22, at 8: David Murray Big Band. (Town Hall, 123 W. 43rd St.) Once again, for information about tickets to any of the above, call 787-2020.



IRVING PLAZA—Friday, June 14: Robyn Hitchcock. . . . ¶ Saturday, June 15: Billy Bragg. (17 Irving Pl., at 15th St. 477-3728. Shows start about 10.)

ART

(Unless otherwise noted, galleries are open Tuesdays through Saturdays from around 10 or 11 to between 5 and 6.)

GALLERIES—UPTOWN

CARROLL CLOAR—Scenes of the rural South, as it is remembered by a native. One painting shows a small child in a cart hitched to a sturdy dominique rooster. Through July 2. (Forum, 1018 Madison Ave., at 79th St. Open Mondays; closed Saturdays.)

EGON SCHIELE (1890-1918)—Oil paintings by an Austrian Expressionist. Through July 13. (Sabarsky, 987 Madison Ave., at 77th St. Opens at noon.)

JOAN THORNE—Recent abstract paintings, some incorporating more than twenty colors, plus pastels on paper. Through Friday, June 21. (Graham, 1014 Madison Ave., at 78th St. Open Mondays; closed Saturdays.)

JOSEPH YOAKUM (1886-1972)—Landscape drawings from the sixties, the early years of his art career. Through July 3. (Hirschl & Adler Modern, 851 Madison Ave., at 70th St. Open Mondays; closed Saturdays.)

GROUP SHOWS—At the **CDS GALLERY,** 13 E. 75th St.: Paintings, sculptures, and works on paper by twentieth-century Latin-American artists, including Fernando Botero, R. Lopez Dirube, Amelia Pelaez, and Claudio Bravo. Through June 29. (Open Mondays.) . . . **MATHES,** 851 Madison Ave., at 70th St.: Helen Torr, Stuart Davis, and Ralston Crawford are three of the American modernists represented by paintings and works on paper. Through Friday, June 21. (Open Mondays; closed Saturdays.) . . . **VANDERWOUDE TANANBAUM,** 24 E. 81st St.: Surrealist paintings and sculptures by seven young artists, Cheryl Laemmle and Nick Ghiz among them. Through July 31. (Open Mondays; closed Saturdays.) . . . **WILLARD,** 29 E. 72nd St.: Paintings and sculptures by nine gallery artists, including Lois Lane, Judith Shea, and Ken Price. Through July 12. (Open Mondays; closed Saturdays.)

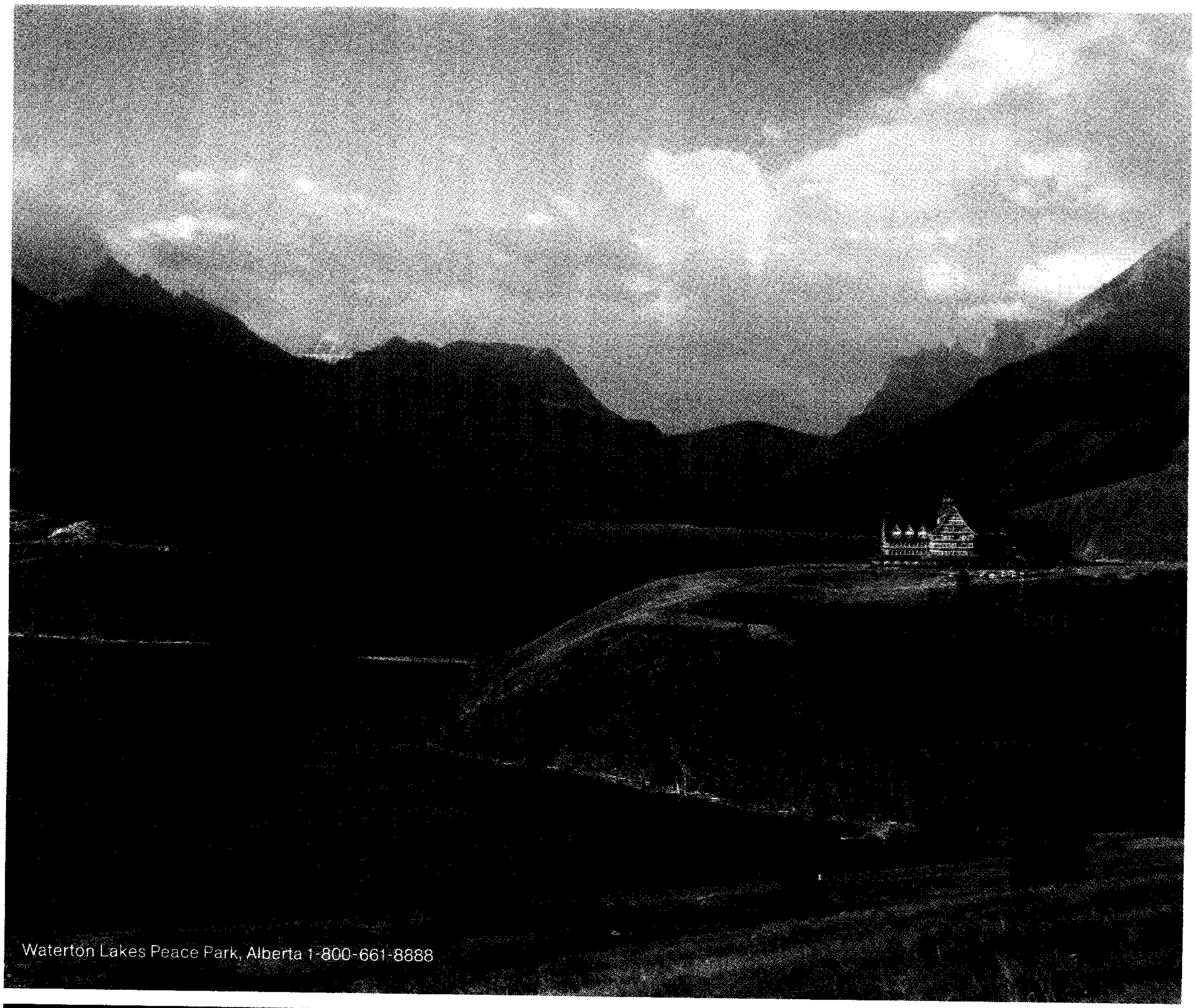
SCULPTURE—Maquettes for outdoor public works by thirteen artists, including Athena Tacha, Eve Licea, and Harvey Weiss. Through June 29. (Kouros, 831 Madison Ave., at 69th St.)

GALLERIES—57TH STREET AREA

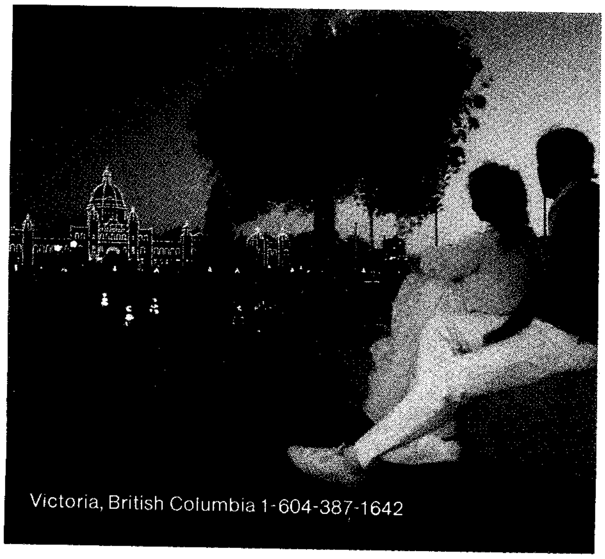
LOTHAR BAUMGARTEN—*Photographs of a Venezuelan jungle where this German conceptual artist lived among nomadic Indians and found, among other things, that man's quest for uranium, tin, gold, and the rest of it is displacing the tapirs, jaguars, armadillos, crocodiles, and even the ants, who belong there.* Through Saturday, June 15. (Marian Goodman, 24 W. 57th St.)

LEN BELLINGER/KIT KEUNG KAN—Thickly painted

Creature Comforts



Waterton Lakes Peace Park, Alberta 1-800-661-8888



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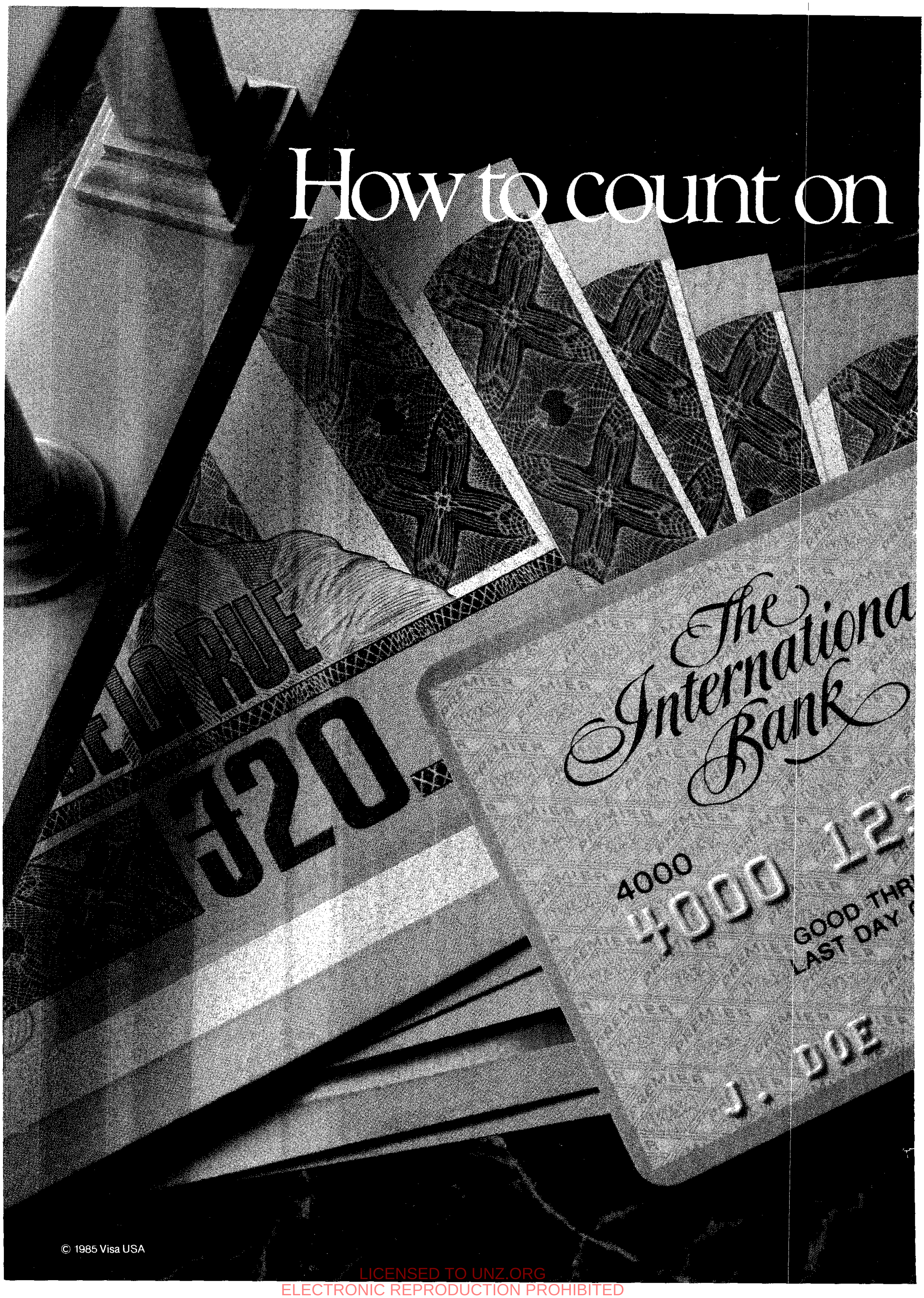
How to count on
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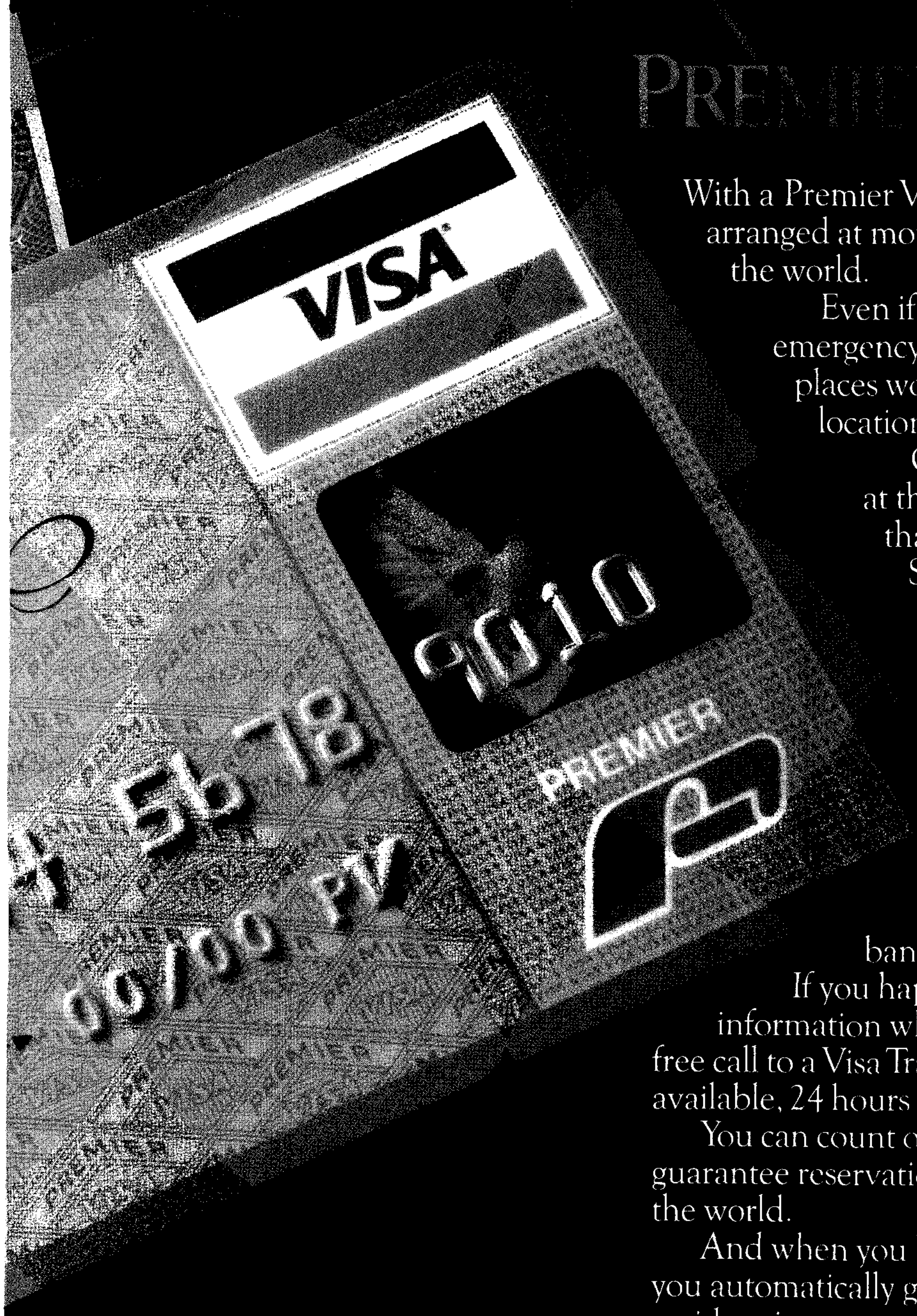

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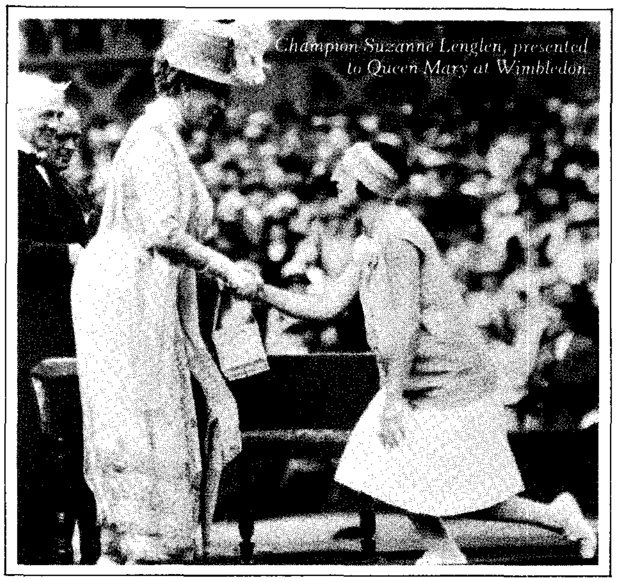
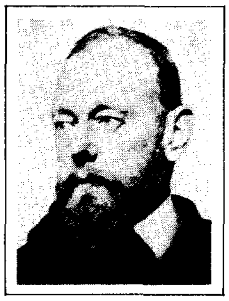


Champion Suzanne Lenglen, presented to Queen Mary at Wimbledon.

The legend that grew from a lawn in Wimbledon.

It was 1875. The year The All England Croquet Club set aside a rectangle of grass on Worple Road for an upstart sport. Lawn tennis.

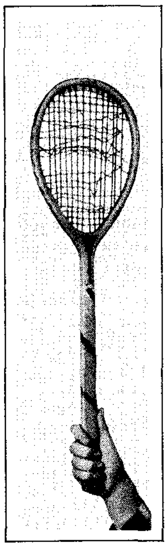


Spencer Gore, the tournament's first champion.

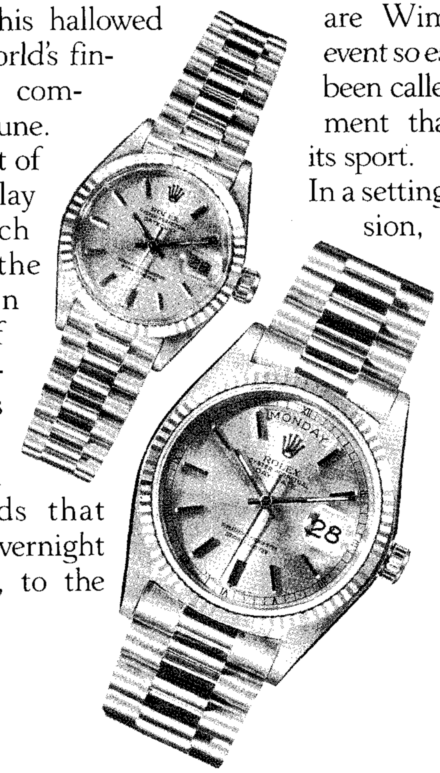
Soon rackets were as much in evidence as mallets. Britain's croquet bastion became The All England Croquet and Lawn Tennis Club.

Two years later, 200 spectators assembled at a shilling each to watch 22 amateur players serve and volley for a silver cup. Net-storming Spencer Gore, wielding a lopsided racket, became the world's first Wimbledon champion.

Today, that legendary lawn thrives on Church Road and has grown to 18 grass courts on 10 acres. Each a repository of revered memories. But none more storied than that cathedral of tennis mystique, Centre Court. A perfectly proportioned quarter-acre on which some of the sport's highest drama has been acted out.

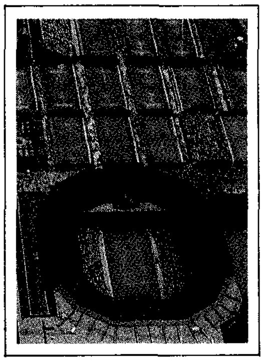


A 19th-century tennis racket.



On this hallowed turf the world's finest players compete each June. A fortnight of riveting play from which emerges the champion worthy of the tournament's laurels.

From the crowds that queue up overnight for tickets, to the royalty, aristocrats, diplomats and celebrities invited to the Royal Box, 350,000 enthusiasts pack the grounds for the two taut weeks that are Wimbledon. An event so esteemed it has been called the tournament that transcends its sport.



Centre Court, where the finals are fought.

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That explains the Rolex on the scoreboard. And its designation as the official timepiece of Wimbledon.

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GOINGS ON ABOUT TOWN

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stylized abstractions based on Gothic interiors. / More or less abstract landscapes done in ink on rice paper. Through June 28. (Markel, 50 W. 57th St. Open Mondays; closed Saturdays.)

James Bohary—Abstract paintings (large and small) in oil, plus charcoal drawings. Through Tuesday, June 18. (Prats, 24 W. 57th St.)

Alexander Calder (1898-1976)—A happy assembly of some of his best works—stabiles, mobiles, paintings—shown to their best advantage. Through Saturday, June 15. (Pace, 32 E. 57th St.)

P. S. Gordon / Cole Young—Large, precisely controlled watercolors of flowers, quilts, toys, and bric-a-brac. / Realist landscapes of the Allegany State Park, with emphasis on the cumulus clouds piled up over it. Through June 26. (Fischbach, 24 W. 57th St. Open Mondays.)

David Hockney / Joel Perlman—Photo-collages. / Freestanding abstract welded-steel sculptures, some more than nine feet high. Through June 28. (Emmerich, 41 E. 57th St. Open Mondays; closed Saturdays.)

Alexandre Hogue—Landscapes of Big Bend National Park, Texas. Through Saturday, June 15. (French, 41 W. 57th St.)

Oliver Johnson—Paintings, pastels, and drawings of felines. Through Aug. 31. (Felicie, 141 E. 56th St. Open Mondays.)

Don Leicht—Art works either made of or painted on metal, by an artist whose father was a sheet-metal worker and who says metal "was like paper to me." Included are a cut out and painted-aluminum reptile with a city skyline on its belly. Through June 28. (Tilton, 24 W. 57th St.)

Kurt Schwitters (1887-1948) / **Avigdor Arikha**—Collages, assemblages, and sculptures from all periods of the artist's career in a show that complements his retrospective at the Museum of Modern Art. Through July 5. / Figurative and still-life oil paintings. Through Friday, June 21. (Marlborough, 40 W. 57th St. Open Mondays.) . . . ¶ More of Schwitters' collages are at La Boetie, 9 E. 82nd St. (Closed Saturdays.)

Janet Stayton—Monotypes from a group entitled "Flower Pieces." Through July 19. (Heesy, 50 W. 57th St. Open Mondays; closed Saturdays.)

Michael Torlen—Paintings of colorful, convoluted forms representing this artist's vision of the Creation. Through June 28. (Ross, 162 W. 56th St. Open Mondays; closed Saturdays.)

Group Shows—At the **ALEXANDER**, 20 W. 57th St.: Paintings and sculptures by sixteen contemporary artists, including Jonathan Borofsky, Yvonne Jacquette, Jasper Johns, and Judy Rifka. Through June 29. . . . **BLUM HELMAN**, 20 W. 57th St.: Paintings by Bruno Ceccobelli, Jeff Gompertz, and José María Sicilia. Through July 26. . . . **DE NAGY**, 41 W. 57th St.: Figurative oil paintings by Jim Butler, David Humphrey, and Ephraim Rubenstein and sculptures by Italo Scanga. Through July 3. . . . **GALERIE ST. ETIENNE**, 24 W. 57th St.: Landscape paintings and works on paper by van Gogh, Grandma Moses, Utrillo, and other European and American artists. Through Sept. 13. (Closed Saturdays.) . . . **GETLER-PALLSAPER**, 50 W. 57th St.: Of the six artists here, two—Heinrich Nicolaus, a German whose paintings seem to poke fun at Borofsky, and Peter Stokolosa, a local talent who paints small, meaty, impastoed abstractions—are making their first New York appearance. Through July 3. . . . **KENNEDY**, 40 W. 57th St.: Traditional American still-lifes from the eighteenth century to the twentieth. Through July 15. (Open Mondays; closed Saturdays.) . . . **ROBERT MILLER**, 724 Fifth Ave., at 57th St.: A wide selection of figurative and abstract works on paper by Henri Matisse, Georgia O'Keeffe, Janet Fish, Man Ray, and many others. Also, paintings by nonprofessionals from the private collections of professional artists. Through July 31. . . . **PEARL**, 38 E. 57th St.: Paintings, drawings, and sculptures by artists new to the gallery scene. Through June 28. (Closed Saturdays.) . . . **SCHOELKOPF**, 50 W. 57th St.: Paintings, sculptures, and works on paper by American modernists, including James Daugherty, Marsden Hartley, and Joseph Stella. Through June 26. (Open Mondays; closed Saturdays.) . . . **HOLLY SOLOMON**, 724 Fifth Ave., at 57th St.: More still-lifes, these from the past twenty-five years (from Milton Avery to Joe Zucker). Through July 3. (Open Mondays.) . . . **ZABRISKIE**, 724 Fifth Ave., at 57th St.: Sculptures combining metal, wood, and ceramic by Peter Briggs; large photographs of machine still-lifes by Pascal Kern; and paintings with airplane motifs by Jean-Luc Poivert. Through July 26. (Open Mondays; closed Saturdays.)

GALLERIES—SoHo

Louis Comtois—Stripe paintings on panels, which vary in size and are made of wood, plaster, cement, and metal. Through June 29. (Meisel, 141 Prince St.)

Jay Coogan—Large, bright-colored wood sculptures of objects that defy classification. Some are freestanding and some are wall pieces, and there are striking pastels of a related character. Through Saturday, June 22. (Knowlton, 153 Mercer St.)

Dan Flavin / Dianne Blell—A large and otherwise empty gallery is transfigured by a double row of pink, yellow, blue, and green fluorescent tubes running along the top of one wall, like a frieze. Through Aug. 30. / Unusually large color photographs of robed figures (Cupid and Psyche, for instance) posed in classical settings. Through Saturday, June 15. (Castelli, 420 West Broadway.)

Fred Gutzeit / Ethelyn Honig—A salon-style mounting of about a hundred paintings and sculptures from the past twenty years. / Abstract oils. Through Saturday, June 22. (55 Mercer Street Gallery.)

Helen Mayer Harrison and Newton Harrison / Edwin Schlossberg—Photographs and texts outlining projects these urban cosmographers undertook toward rescuing rivers in San Jose and Pasadena, and softening the looks of Atlanta's fortresslike inner city. / A large room full of this poet's works lettered on aluminum-and-Scotchlite signs, fixed to the walls and posted on a forest of pillars; the title of the series is "Deep See Poems." Through Saturday, June 15. (Feldman, 31 Mercer St.)

Martin Kippenberger—Paintings by a contemporary German whose works reflect amusement rather than angst; one canvas shows the artist in an automobile of the future. Through Saturday, June 15. (Metro Pictures, 150 Greene St.)

Rosemary Mayer / Joanne Howard—Translucent urnlike sculptures made of paper. / Small landscape paintings from a palette of dark colors. Through June 28. (Pam Adler, 578 Broadway.)

Roman Opalka—This Conceptualist continues his count to infinity with another series of paintings and drawings of numbers. Tape recordings of Mr. Opalka counting accompany the show. Through Saturday, June 22. (Weber, 142 Greene St.)

Masaaki Sato / Vladimir German—Life-size paintings of newsstands jammed with colorful magazines, papers, chewing gum, and candy bars. / Small Ryderesque paintings of lonely ships at sea, done in oil on paper. Through Saturday, June 22. (O.K. Harris, 383 West Broadway.)

Alan Scarritt / Norman Tuck—An installation of abstract photographs, drawings, plaster sculptures, and electronic sounds. / Large kinetic sculptural works that are set in motion by people power—a turn of a hand crank starts a waterfall, for example. Through June 29. (Exit Art, 578 Broadway. Opens at noon.)

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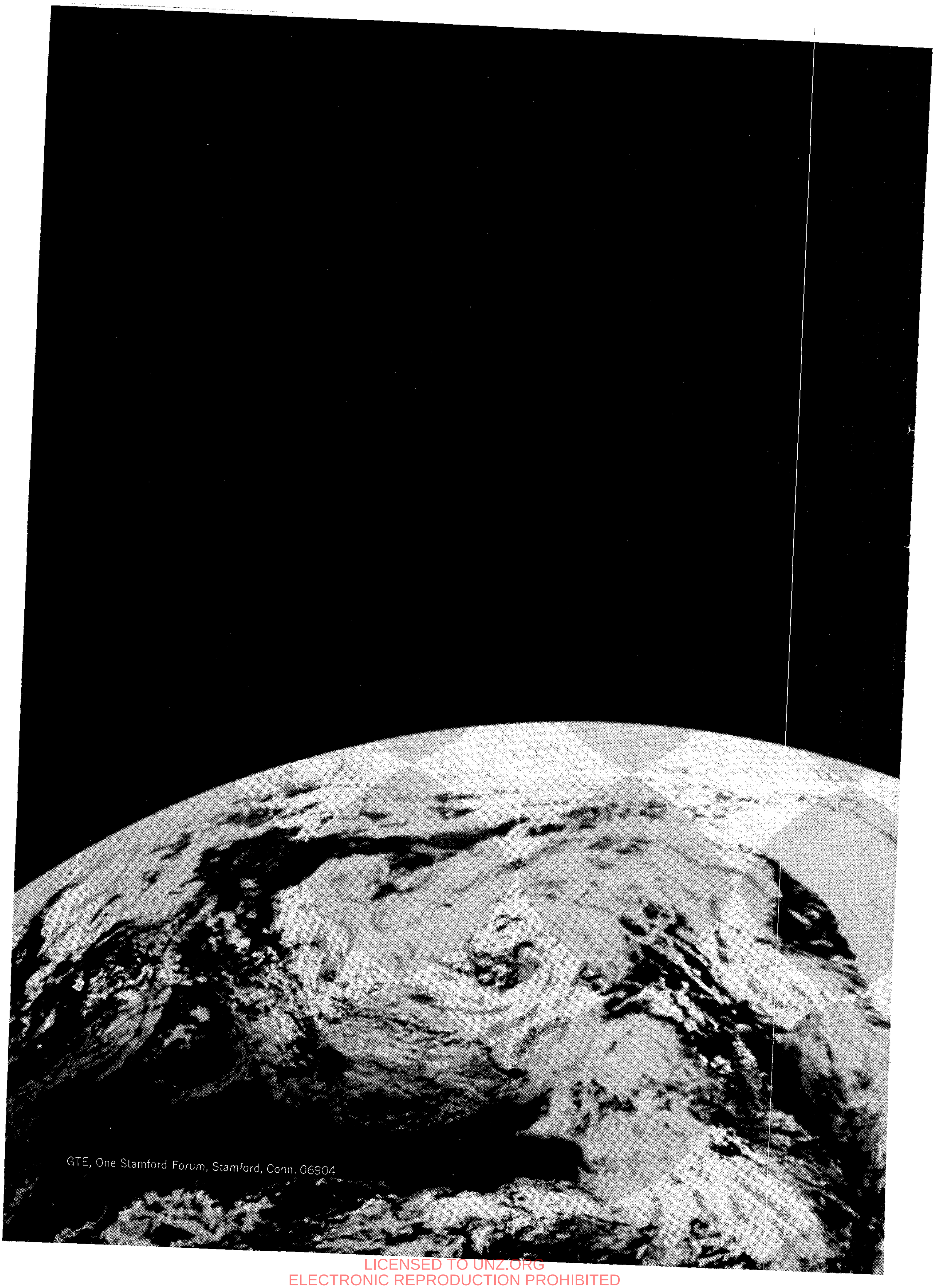
Alan Siegel—Wood chairs are the convention; the invention lies in their embellishment, such as the chair that has van Gogh's wicker painted on it in van Gogh colors. Through June 26. (Hoffman, 429 West Broadway.)

Group Shows—At the **BOONE**, 417 West Broadway: The Brooklyn Academy of Music will benefit from the sale of paintings by Carroll Dunham, Elizabeth Murray, Terry Winters, and many other artists. Through June 29. . . . **BRYERS**, 111 Greene St.: An exhibit in which the frame has equal billing with the artwork it encloses; Robert Morris, Gwenn Thomas, and Joe Zucker are among the eighteen painters and photographers represented. Through June 25. . . . **CONCORD**, 451 Broome St.: Contemporary artists Jessica Diamond, Ed Ruscha, and William Wegman are included in this selection of drawings, photographs, paintings, and installations which is intended to make the gallery-goer chuckle. Through July 12. . . . **COWLES**, 420 West Broadway: Abstract paintings and sculptures from 1964 to the present by twenty artists, including Gregory Amenoff, Lynda Benglis, Jake Berthot, Cy Twombly, and Jackie Winsor. Through July 12. . . . **CUTLER**, 164 Mercer St.: A big grab bag of small works—masks, paintings, drawings, reliefs, toys—by seventy-five artists on the way up. Through July 3. . . . **THE DRAWING CENTER**, 137 Greene St.: Drawings on loan from the Museo Correr, in Venice, which represent work done in that city from the Renaissance through the nineteenth century. Through July 27. (Open Wednesday evenings until 8.) . . . **ESMAN**, 70 Greene St.: Furniture pieces (of a sort) and objects (a bathroom scale with footprints and splotches of colored cement, for instance) by such East Village artists as Dan Friedman, Kenny Scharf, Rodney Alan Greenblatt, and Rhonda Zwillinger. Through July 3. . . . **GERMANS VAN ECK**, 420 West Broadway: A look at what's going on abroad; paintings and sculptures by young Europeans. Through June 29. . . . **GLADSTONE**, 152 Wooster St.: Seven artists' views of life in our times—Sue Cole's collage painting of a subway vigilante is one. Through July 26. . . . **KIND**, 136 Greene St.: A stylized painting by Roger Brown dealing with the Siberian explosion that blew trees down concentrically; a canvas, entitled "Jazz," by Archie Rand, showing an ancestral-looking trumpeter and a maiden teasing a crab with a stick; and other works. Through July 26. . . . **NOSEI**, 100 Prince St.: An epidemic of doors—found doors, constructed doors, paintings of and on doors. Some of the artists: Mike Bidlo, Chuck Connelly, Karel Appel. Through July 15. (Open Mondays; closed Saturdays.) . . . **STEPHEN ROSENBERG**, 115 Wooster St.: Abstract oil paintings by Linda Besemer, Willy Heeks, Nicholas Maffei, and Claire Seidl. Through July 30. (Opens at noon.) . . . **SHAFRAZI**, 163 Mercer St.: A very big black-and-red painting by Rick Prol of a city burning while batlike demons hover overhead; surrealist landscapes by Steve Koivisto; also, new works by Samantha McEwen, James Nares, and Bruno Schmidt. Through June 29. . . . **SOHO CENTER FOR VISUAL ARTISTS**, 114 Prince St.: Recent paintings by Eva Goetz, Amy Kool, Doris Lanier, and Betty Tompkins. Through Saturday, June 15. (Opens at noon.) . . . **THORP**, 103 Prince St.: Paintings by Gregory Crane, June Leaf, and R. L. Kaplan. Through June 29. . . . **TOLL**, 146 Greene St.: A painting of a gigantic overturned teacup with a mirror in the bottom by Soo-Young Lee, and a painting of a gigantic head surrounded by Lilliputian figures by Nachume Miller. Gregory Botts and Christopher Wool also have works. Through June 28.

OTHER GALLERIES

Judy Rifka / David West—Nudes and still-lifes painted directly on the Gracie Mansion Gallery walls; classical figures painted on canvases shaped to give them a sculptural quality. / Oil paintings of rudimentary figures. Through Sunday, June 16. (Gracie Mansion Gallery, 167 Avenue A, at 10th St. Opens at 1.)

Diego Rivera (1886-1957)—Watercolors and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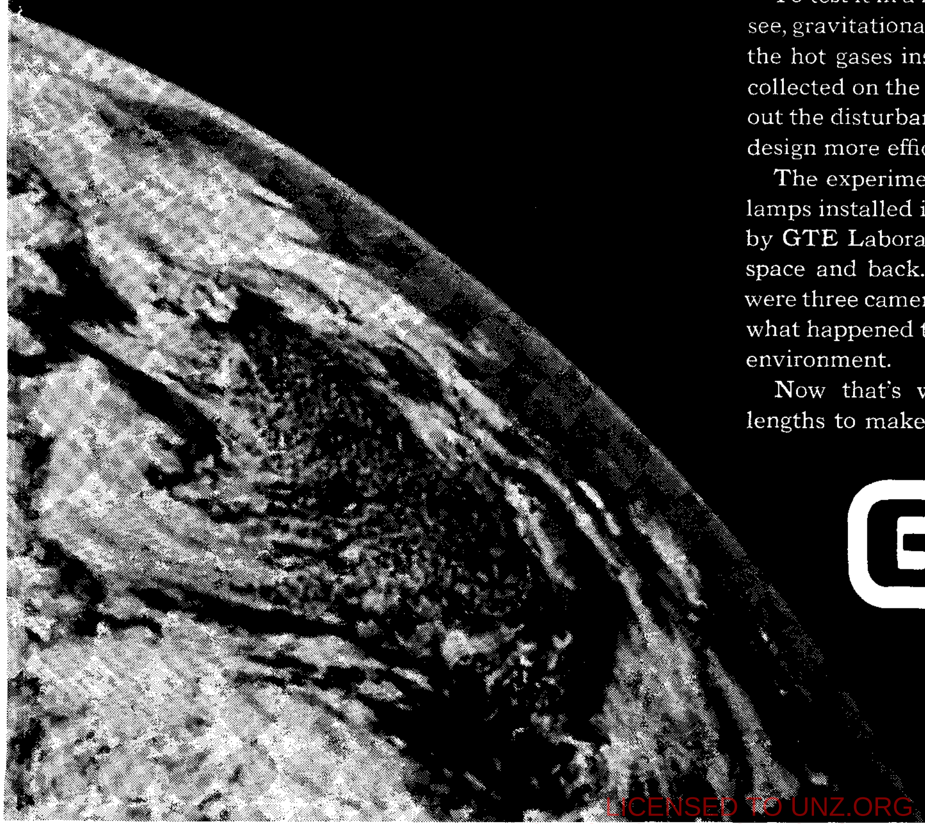

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drawings, mostly of Mexican subjects but a few done in Russia when the artist was a guest at the tenth anniversary of the revolution. Through June 28. (Martin, 213 E. 49th St. Open Mondays; closed Saturdays.)

Russell Sharon—Bright-colored "people and pets" of the artist's design—the former sculpted from tree trunks with a chain saw, the latter constructed with wood strips. Through June 28. (Bromm, 90 West Broadway, at Chambers St.)

Ignacio Zuazo—Found objects, among them arms, legs, and hands of mannequins, painted black and combined in sculptures. Also, paintings, mostly black-and-white. Through Saturday, June 15. (Bouckaert, 100 Hudson St.)

P.S. 1—Paintings by forty-four artists from Houston and photographs by ten Swedes are just two of the many shows in progress here. Through June 23. (46-01 21st St., Long Island City. Thursdays through Sundays, noon to 6.)

The Razor Show—A two-gallery exhibit of *paintings, sculptures, drawings, photographs*, and video honoring the old Razor Gallery, one of the first to open in SoHo (it closed in 1979). Thirty-four alumni, including Coco, Judy Pfaff, Helmut Amann, Franc Palaia, and Robert Colescott, are represented by one work from the Razor era and one current piece. Through June 29. (Baum, 109 Hudson St. . . . ¶ Hudson Center, 105 Hudson St. Opens at noon.)

Group Shows—At the **artists space**, 223 West Broadway: Installations and individual works by five artists chosen to represent Seattle, *Minneapolis, Chicago, Boston*, and Atlanta. Through June 29. . . . **city gallery**, 2 Columbus Circle: Paper is the medium for three-dimensional works by Louis Lieberman, Lynn Umlauf, Kenneth Noland, Joel Fisher, and others. Through July 6. (Open Mondays.) . . . **stoler**, 13 White St.: An eleven-foot tondo by Lee Jaffe entitled "Sitting Bull Meets the Lone Ranger." It consists of Western images, Sitting Bull's head looming large among them, painted on a canvas collaged with a couple of tiny videos showing a Hi-Yo Silver episode. Alan Belcher, Frank Majore, Steve Miller, and Jeffrey Pittu are also represented. Through June 28.

Note—At Art Galaxy, 262 Mott St., just south of Houston St.: A hooded embrasure, accessible twenty-four hours a day from the street outside the gallery, looks in on a small-scale mountainous landscape with a waterfall and glowing volcanoes. Rainstorms occur regularly, lightning flashes, and a river races along at flood tide. The installation is the work of Kristin Jones and Andrew Ginzel. Through July 31.

PHOTOGRAPHY

Andreas Feininger—Experimental photographs of nature from the thirties; still-lifes from the seventies and eighties. Through June 28. (Wolf, 30 W. 57th St. Open Mondays; closed Saturdays.)

André Kertész—Vintage and modern prints of public gardens in Budapest, Paris, and New York. Through June 29. (Harder, 37 W. 57th St. Closed Tuesdays.)

Erica Lennard—Photographs of India. Through June 29. (Sonnabend, 420 West Broadway.)

Milton Rogovin—A retrospective of photographs has been mounted by the Brooklyn Museum. See below, under "Museums," for dates and times.

Group Show—An exhibit of thirty-two prints underscoring the idea that the landscape compositions of early-to-mid-twentieth-century European photographers had more to do with art movements than with mountains. Through July 5. (Prakapas, 19 E. 71st St. Opens at noon; closed Saturdays.)

MUSEUMS AND LIBRARIES

Metropolitan Museum, Fifth Ave. at 82nd St.—From the museum's collection of seventy pianos, a kind of genealogical selection—the oldest existing piano (1720), built by the instrument's inventor, Cristofori, and about thirty of its progeny; audioguides are available on which visitors can hear them being played. . . . ¶ An exhibit of a hundred gold objects produced by the prodigious craftsmen of pre-Columbian cultures of the Americas. The pieces, among them pendants, masks, and cups, are from the collection of Jan Mitchell. Through Aug. 11. . . . ¶ Pre-Columbian sculptural works by the Taíno tribes of the Dominican Republic are also on view. (Open daily except Mondays. Hours: Tuesdays through Sundays, 9:30 to 5:15, and Tuesday evenings until 8:45.)

Museum of Modern Art, 11 W. 53rd St.—A retrospective of works by Kurt Schwitters includes a comprehensive selection of collages by one of the first artists to use that form. Complementary exhibits are at Marlborough Gallery, 40 W. 57th St., and La Boetie, 9 E. 82nd St. (The museum is open daily, except Wednesdays, 11 to 6, and Thursday evenings until 9.)

Guggenheim Museum, Fifth Ave. at 89th St.—A Gilbert and George retrospective of large photographic murals, in which the artists themselves appear. . . . ¶ An exhibit of works on paper by Mark Rothko. Both shows through Sunday, June 16. (Open daily except Mondays. Hours: Tuesdays, 11 to 8, with no admission charge from 5 to 8; Wednesdays through Sundays, 11 to 5.)

Whitney Museum of American Art, Madison Ave. at 75th St.—A selection of more than ninety of the drawings that have entered the collection over the past few years. (Open daily except Mondays. Hours: Tuesdays, 1 to 8, with no admission charge after 6; Wednesdays through Saturdays, 11 to 5; Sundays, noon to 6.)

Brooklyn Museum, Eastern Parkway—A show of photographs by Milton Rogovin. Through July 22. (Open daily except Tuesdays. Hours: Mondays and Wednesdays through Fridays, 10 to 5; Saturdays, 11 to 6; Sundays, 1 to 6.)

American Museum of Natural History, Central Park W. at 79th St.—The *ancient Mayan* civilization is recaptured and documented in an exhibit of objects (in gold, wood, jade, and shell), plus maps and photographic blowups. Through July 28. (Open daily. Hours: Mondays, Tuesdays, Thursdays, and Sundays, 10 to 5:45; Wednesdays, 10 to 9; Fridays and Saturdays, 10 to 9, with no admission charge after 5.)

Asia Society, 725 Park Ave., at 70th St.—A show devoted to paintings, scrolls, screens, and other works by seventeenth- to nineteenth-century Japanese artists who re-created supernatural figures in Japanese folklore—the Taoist Immortals, Shōki the Demon Queller, and Kabuki ghosts among them. Organized by the Spencer Art Museum, University of Kansas. Starts Thursday, June 13. (Open daily except Mondays. Hours: Tuesdays through Saturdays, 11 to 6; Sundays, noon to 5.)

Cooper-Hewitt Museum, Fifth Ave. at 91st St.—An all-purpose exhibit about wine as a creative stimulant: Chalices, decanters, goblets, and vessels of every kind; wallpaper, prints, textiles, and other decorative objects using grapevine patterns. Also, equipment for harvesting and processing—for instance, a large copper-and-brass still from the Cognac region of France. . . . ¶ A retrospective of Chicago furniture: An 1873 dressing table by W. W. Strong for the bridal suite of the Palmer House; a 1927 skyscraper-style armchair by Abel Faidy; a 1983 green lacquer vanity by Cal Spritzer. Through Aug. 25. (Open daily except Mondays. Hours: Tuesdays, 10 to 9, with no admission charge after 5; Wednesdays through Saturdays, 10 to 5; Sundays, noon to 5.)

Japan House, 333 E. 47th St.—A show that reviews recent public buildings designed by Japanese architects Fumihiko Maki and Arata Isozaki, outlining their projects from conception to completion through models, drawings, blueprints, photographs, and slides. Among the structures presented are the National Museum of Modern Art in Kyoto (Maki) and the Museum of Contemporary Art in Los Angeles (Isozaki). (A local design by Mr. Isozaki is the interior of the Palladium, the recently opened night club on Fourteenth Street.) Through June 30. (Open daily, except Mondays, 11 to 5.)

Jewish Museum, Fifth Ave. at 92nd St.—A show of paintings and drawings by German artist Felix Nussbaum (1904-44), many from the period when he lived in hiding during the Second World War. The artist died at Auschwitz. Through Aug. 4. (Open daily except Saturdays. Hours: Mondays through Thursdays, noon to 5, and Tuesday evenings until 8; Fridays, 11 to 3; Sundays, 11 to 6.)

Morgan Library, 29 E. 36th St.—A show of drawings and watercolors by Théodore Géricault, including fourteen preliminary studies for his best-known painting, "The Raft of the Medusa" (at the Louvre). . . . ¶ A display of memorabilia pertaining to "The Mikado," which was first performed a hundred years ago. Both shows through July 31. (Open daily except Mondays. Hours: Tuesdays through Saturdays, 10:30 to 5; Sundays, 1 to 5.)

Museum of American Folk Art, 125 W. 55th St.—High points in Southern folk art have been gathered for a show of ninety pieces, including Moravian redware and a quilt in the Afro-American tradition from North Carolina; a 1743 sampler from South Carolina; and, from Mississippi, examples of a singular nineteenth-century art form combining silhouettes and watercolors and called Nita Yuma pasties (after a plantation of that name), by William Henry Brown. Through Aug. 25. (Open daily except Mondays. Hours: Tuesdays, 10:30 to 8, with no admission charge after 5:30; Wednesdays through Sundays, 10:30 to 5:30.)

National Academy of Design, 1083 Fifth Ave., at 89th St.—A show of drawings by John Singer Sargent which provides a broad selection of his works on paper; on loan from the Corcoran Gallery of Art. Through June 23. (Open daily except Mondays. Hours: Tuesdays, noon to 8, with no admission charge after 5; Wednesdays through Sundays, noon to 5.)

The New Museum, 583 Broadway—The forms and the language of signs (as in road signs and logos) are reflected in paintings, photographs, video, and, well, signs of all kinds by nine artists—Al Souza, Jenny Holzer, John Knight, and Marian Galczenski among them. Through July 7. . . . ¶ A show of paintings and works on paper by Pierre Tal-Coat, a French abstractionist. Through June 30. (Open daily except Mondays and Tuesdays. Hours: Wednesdays, noon to 8; Thursdays through Sundays, noon to 6.)

New-York Historical Society, 170 Central Park W., at 77th St.—The bicentennial of Audubon's birth is cause for celebration at the society, which owns and has mounted all four hundred and thirty-three remaining original watercolors for "Birds of America." (Open daily except Mondays. Hours: Tuesdays through Fridays, 11 to 5; Saturdays, 10 to 5; Sundays, 1 to 5.)

Studio Museum in Harlem, 144 W. 125th St.—A large show called "Images of a Turbulent Decade, 1963-1973," which presents works in diverse mediums, primarily by black but also by anti-war and feminist artists, among them Benny Andrews, Rudolf Baranik, Romare Bearden, David Hammons, Gordon Parks, Betye Saar, and May Stevens. Also, a number of documentary photographs of civil-rights leaders and marchers. Through June 30. (Open Wednesdays through Fridays, 10 to 5; Saturdays and Sundays, 1 to 6.)

ART AFTER DARK

(Performance, music, dance, video, film, and combinations thereof.)

Joseph Celli and Camus Celli—Music, video, and performance. (The Clocktower, 108 Leonard St. Thursday, June 20, at 8. . . . ¶ 22 Wooster Gallery. Friday, June 21, at 9. Admission by contribution.)

P.S. 122, 150 First Ave., at 9th St. 477-5288.—Linda Mussman (performance), Thursday through Sunday, June 13-16, at 9; Diane Torr (performance), Friday through Sunday, June 21-23, at 9.

MUSIC

(The box-office number for Carnegie Hall is 247-7800, and for Merkin Concert Hall, Abraham Goodman House, 129 W. 67th St., 362-8719. Other box-office numbers are included in the listings.)

Robert DeGaetano—Piano, with the Philharmonia Virtuosi, in an all-Bach program. (Merkin Concert Hall, Abraham Goodman House. Wednesday, June 12, at 8.)

Aulos Ensemble—With Stanley Ritchie, baroque violin. (Rutgers Presbyterian Church, 236 W. 73rd St. Wednesday, June 12, at 8. For information about tickets, call 663-7565.)

Michael McGifford—Tenor. (Merkin Concert Hall, Abraham Goodman House. Thursday, June 13, at 8.)

J. S. Bach: The Complete Organ Works—Two in a series of sixteen biweekly recitals, each performed by a different organist. (St. Paul's Chapel, Columbia University, Broadway at 116th St. Thursday, June 13, at 8: George Stauffer. . . . Grace Church, Broadway at 10th St. Sunday, June 16, at 3: Louise Basbas. Admission to both concerts by contribution.) . . . ¶ The eighth in a series of thirteen recitals by Donald Joyce. (Church of St. John the Evangelist, First Ave. at 55th St. Thursday, June 20, at 8. Tickets at the door on the night of the concert.)

Harmonic Choir—David Hykes directing. (Cathedral of St. John the Divine, Amsterdam Ave. at 112th St. Thursday through Saturday, June 13-15, at 7:30. Tickets at the door on the nights of the concerts.)

New York Chamber Orchestra—Laurine Celeste Fox conducting. (Carnegie Recital Hall. Thursday, June 13, at 8.)

"Americana, or, A New Tale of the Genii"—James Sinclair conducting the Chamber Orchestra of New England in the première performance, in concert form, of this opera by Neely Bruce (score) and Tony Connor (libretto). (Symphony Space, Broadway at 95th St. 864-5400. Friday, June 14, at 8.)

Paul Winter and Yevgeni Yevtushenko—With the Paul Winter Consort, in a program of music and poetry. (Carnegie Hall. Sunday, June 16, at 8.)

Western Wind—A program called "Wondrous Harmony: The Vocal Ensemble Art from the Renaissance to Jazz." With Roger Kellaway, piano, and Jay Leonhart, bass. (Merkin Concert Hall, Abraham Goodman House. Sunday, June 16, at 8.)

Bartholome Diaz—Classical guitarist. (CAMI Hall, 165 W. 57th St. Wednesday, June 19, at 8. For tickets, call 757-3255.)

Steven Glaser—Piano. (Merkin Concert Hall, Abraham Goodman House. Thursday, June 20, at 8.)

North / South Consonance—Linda Denham, soprano; Lauren Weiss, flute; Max Lifchitz, piano; and others in a program honoring the eighty-fifth birthday of composer Otto Luening. Mr. Luening will speak. (Christ and St. Stephen's Church, 120 W. 69th St. Thursday, June 20, at 8. Tickets at the door on the night of the concert.)

Laurie Anderson—Violinist/composer, performing her new work, "Talk Normal." (Alice Tully Hall. 362-1911. Saturday, June 22, at 8.)

Benefit Concerts—The Alaria Chamber Ensemble. (Mannes College of Music, 150 W. 85th St. Tuesday, June 18, at 8. Admission by contribution.) . . . ¶ Nicholas Rosen, cello; Mark Peskanov, violin; Alexander Peskanov, piano; and others. (Merkin Concert Hall, Abraham Goodman House. Wednesday, June 19, at 8.)

SPORTS

Baseball—**yankees** at Yankee Stadium: Vs. Toronto, Wednesday, June 12, at 8. . . . ¶ Detroit, Friday, June 14, at 8; Saturday, June 15, at 4:05; and Sunday, June 16, at 2. . . . **mets** at Shea Stadium: Vs. Chicago, Monday through Wednesday, June 17-19, at 7:35, and Thursday, June 20, at 1:35. . . . ¶ Montreal, Friday, June 21, at 8:05, and Saturday, June 22, at 7:35.

Racing—At **belmont:** Daily, except Tuesdays, at 1; through Monday, July 29. The Mother Goose, Saturday, June 15, and the Bowling Green Handicap, Sunday, June 16. (Frequent trains leave Penn Station for the track Mondays and Wednesdays through Fridays between 10:53 and 12:59, and Saturdays and Sundays between 10:58 and 1:04.) . . . **garden state park,** Cherry Hill, N.J.: Nightly at 8; through Saturday, June 15. The Vineland Handicap, Friday, June 14. . . . **monmouth park,** Oceanport, N.J.: Weekdays at 1:30; through Saturday, Aug. 31. . . . **atlantic city at garden state park,** Cherry Hill, N.J.: Weeknights at 8, from Monday, June 17, through Thursday, July 25.

Soccer—At Giants Stadium, the Meadowlands: Cosmos vs. Lazio of Italy, Sunday, June 16, at 7. . . . ¶ Cosmos vs. West German All-Stars, Wednesday, June 19, at 7. (For information about tickets, call 1-201 935-3900.)

Trotting—At **yonkers raceway:** Weeknights at 8; through Monday, June 17. . . . **roosevelt raceway,** Westbury: Weeknights at 8, from Tuesday, June 18, through Saturday, Aug. 3. . . . **saratoga raceway,** Saratoga Springs: Tuesdays through Saturdays at 8; through Saturday, Nov. 23. . . . **meadowlands:** Weeknights at 8; through Saturday, Aug. 17.

ET ALIA

Prose Readings—"Bloomsday on Broadway IV," a program of readings from James Joyce's "Ulysses," "A Portrait of the Artist as a Young Man," and "Finnegans Wake," by Tammy Grimes, Amanda Plummer, Fritz Weaver, Maria Tucci, Jonathan Hadary, and others. (Symphony Space, Broadway at 95th St. Sunday, June 16, from 1 to 5. For information about tickets and the reading schedule, call 864-5400.)

Auctions—At Sotheby's, York Ave. at 72nd St. (Exhibition hours: Tuesdays through Saturdays, 9:30 to 5; Sundays, 1 to 5.)—Wednesday and Thursday, June 12-13, at 10:15 and 2: Jewelry. . . . ¶ Friday, June 14, at 10:15: Impressionist and modern paintings, drawings, and sculptures. . . . ¶ Saturday, June 15, at 10:15 and 2: Paperweights. . . . ¶ Monday, June 17, at 10:15 and 2: Watches, clocks, and scientific instruments. . . . ¶ Wednesday, June 19, at 2: Musical instruments. Exhibition starts Saturday, June 15. . . . ¶ Thursday, June 20, at 10:15 and 2: American nineteenth- and twentieth-century paintings, drawings, and sculptures. Exhibition starts Saturday, June 15.

THE GREAT OUTDOORS

Metropolitan Opera, Concert Productions—**prospect park,** Brooklyn: Friday, June 14, at 8:30 (rain date, June 16), "Manon Lescaut," with Patricia Craig, Vasile Moldoveanu, Vernon Hartman, and Ara Berberian; conducted by Nello Santi. . . . **botanical gardens,** the Bronx: Saturday, June 15, at 8:30 (rain date, June 16), "Rigoletto," with Gail Robinson, Isola Jones, John Alexander, and Richard J. Clark; Richard Woitach. . . . **central park's great lawn:** Tuesday, June 18, at 8:30 (rain date, June 20), "Rigoletto," with the same cast as June 15, except Juan Pons will replace Mr. Clark. . . . **astoria park,** Queens: Wednesday, June 19, at 8:30 (rain date, June 20), "Manon Lescaut," with Adriana Maliponte, Vasile Moldoveanu, Vernon Hartman, and James Courtney; Nello Santi. . . . **cunningham park,** Queens: Friday, June 21, at 8:30 (rain date, June 23), "Rigoletto," with Gwendolyn Bradley, Claudia Catania, John Alexander, and Aldo Protti; Richard Woitach.

Damrosch Park, Lincoln Center—Saturday, June 15, at 8: Jens Nygaard conducting the Naumburg Orchestra in the first in a series of three concerts, this one with Robert Sherman, narrator. . . . ¶ Saturday, June 22, at 8: A company of thirty Middle-Eastern dancers, accompanied by oud and percussion.

Brooklyn Botanic Garden—The Cranford Rose Garden is open for the season, with more than five thousand rosebushes representing six hundred varieties. (Tuesdays through Fridays, 9 to 4:30; Saturdays and Sundays, 10:30 to 4:30.)

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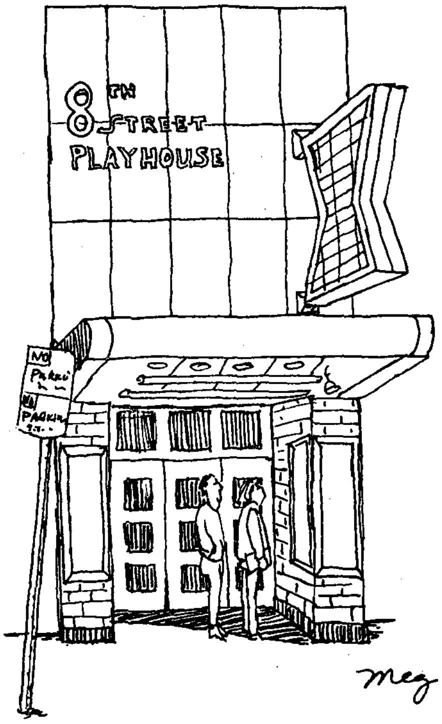

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FILMS ACCOMPANIED BY A DAGGER ARE DESCRIBED IN THE "IN BRIEF" SECTION, STARTING ON PAGE 22.

EAST SIDE

Little Theatre, Public Theatre, 425 Lafayette St. (598-7171; theatre opens in the late afternoon and is closed Mondays.)
Through June 20: "Alphaville" (†).
From June 21: At 4, "National Velvet" (†); and "Lassie Come Home" (1943; directed by Fred M. Wilcox), with Roddy McDowall, Elizabeth Taylor, and Donald Crisp. At 8, "The Sandpiper" (†) and "Who's Afraid of Virginia Woolf?" (†).

R.K.O. Century Art, 36 E. 8th. (473-7014)
Through June 13: "Movers and Shakers" (William Asher), with Walter Matthau and Charles Grodin.
From June 14: To be announced.

St. Marks Cinema, 2nd Ave. at 8th. (533-9292)
Through June 13: "Lost in America" (†); and "The Little Drummer Girl" (George Roy Hill), with Diane Keaton, Klaus Kinski, and Yorgo Voyagis.
From June 14: To be announced.

Gramercy, Lexington at 23rd. (475-1660)
Through June 13: Theatre closed.
From June 14: "Secret Admirer" (David Greenwalt), with C. Thomas Howell.

Bay Cinema, 2nd Ave. at 32nd. (679-0160)
"Rambo: First Blood Part II" (†).

Murray Hill, 160 E. 34th. (685-7652)
"The Goonies" (Richard Donner).

Loews 34th Street Showplace, 238 E. 34th. (532-5544)
Theatre 1: Through June 13: "Brewster's Millions" (Walter Hill), with Richard Pryor and John Candy. From June 14: To be announced.
Theatre 2: Through June 13: "Desperately Seeking Susan" (†). From June 14: To be announced.
Theatre 3: Through June 13: "A View to a Kill" (†). From June 14: To be announced.

34th St. East, 241 E. 34th. (683-0255)
"Perfect" (James Bridges), with John Travolta and Jamie Lee Curtis.

Eastside Cinema, 3rd Ave. at 55th. (755-3020)
Through June 13: "Desperately Seeking Susan" (†).
From June 14: "The Purple Rose of Cairo" (†).

Sutton, 3rd Ave. at 57th. (759-1411)
Through June 13: "Ladyhawke" (†).
From June 14: "Prizzi's Honor" (John Huston), with Jack Nicholson and Kathleen Turner.

Gotham Cinema, 3rd Ave. at 58th. (759-2262)
"Quest for Fire" (†).

Plaza, 42 E. 58th. (355-3320)
"Sylvia" (Michael Firth; a New Zealand film).

Manhattan 1 and 2, 3rd Ave. at 59th. (935-6420)
Theatre 1: "The Goonies" (Richard Donner).
Theatre 2: "The Goonies."

Baronet and Coronet, 3rd Ave. at 59th. (355-1663)
Theatre 1: "Perfect" (James Bridges), with John Travolta and Jamie Lee Curtis.
Theatre 2: Through June 13: "Sam's Son" (Michael Landon), with Eli Wallach. From June 14: "A Passage to India" (†).

D. W. Griffith, 235 E. 59th. (759-4630)
"Witness" (†).

Cinema I and II, 3rd Ave. at 60th. (753-6022/0774)
Theatre 1: "The Shooting Party" (†).
Theatre 2: "Movers and Shakers" (William Asher), with Walter Matthau and Charles Grodin.

Gemini 1 and 2, 2nd Ave. at 64th. (832-1670)
Theatre 1: Through June 20: "Amadeus" (†). From June 21: "Lifeforce" (Tobe Hooper), with Steve Railsback.
Theatre 2: "Rambo: First Blood Part II" (†).

Beekman, 2nd Ave. at 66th. (737-2622)
Through June 13: "The Purple Rose of Cairo" (†).
From June 14: "Secret Admirer" (David Greenwalt), with C. Thomas Howell.

Loews New York Twin 1 and 2, 2nd Ave. at 67th. (744-7339)
Theatre 1: Through June 13: "Witness" (†). From June 14: To be announced.
Theatre 2: Through June 13: "A View to a Kill" (†). From June 14: To be announced.

68th St. Playhouse, 3rd Ave. at 68th. (734-0302)
"The Gods Must Be Crazy" (Jamie Uys).

Loews Tower East, 3rd Ave. at 71st. (879-1313)
Through June 13: "Fletch" (Michael Ritchie), with Chevy Chase.
From June 14: To be announced.

U. A. 85th St. East, 1st Ave. at 85th. (249-5100)
Through June 20: "Desperately Seeking Susan" (†).
From June 21: "Lifeforce" (Tobe Hooper), with Steve Railsback.

Loews Orpheum 1 and 2, 3rd Ave. at 86th. (289-4607)
Theatre 1: Through June 13: "A View to a Kill" (†). From June 14: To be announced.
Theatre 2: Through June 13: "Brewster's Millions" (Walter Hill), with Richard Pryor and John Candy. From June 14: To be announced.

86th St. East, 3rd Ave. at 86th. (249-1144)
Through June 13: "A Passage to India" (†).
From June 14: "Cannibal Holocaust."

R.K.O. Century 86th St. Twin, Lexington at 86th. (289-8900)
Theatre 1: "The Goonies" (Richard Donner).
Theatre 2: "Rambo: First Blood Part II" (†).

WEST SIDE

Film Forum 1 and 2, 57 Watts St. (431-1590; Mondays through Fridays, theatre opens in the late afternoon.)
Theatre 1: "White Elephant" (1984; directed by Werner Grusch), with Peter Firth.
Theatre 2: Through June 13: "Kaddish" (Steve Brand), a documentary. June 14-20: "Lost in America" (†). From June 21: To be announced.

Waverly 1 and 2, 6th Ave. at 3rd. (929-8037)
Theatre 1: "The Purple Rose of Cairo" (†).
Theatre 2: "The Brother from Another Planet" (John Sayles), with Joe Morton, Dee Dee Bridgewater, and Sayles.

Greenwich Playhouse 1 and 2, Greenwich Ave. at 12th. (929-3350)
Theatre 1: "Fletch" (Michael Ritchie), with Chevy Chase.
Theatre 2: "George Stevens: A Filmmaker's Journey" (George Stevens, Jr.), a documentary.

Quad Cinema, 34 W. 13th. (255-8800)
Theatre 1: "What Have I Done to Deserve This!" (†).
Theatre 2: Through June 13: "Lily in Love" (Karoly Makk), with Christopher Plummer and Maggie Smith. From June 14 (tentative): "Brewster's Millions" (Walter Hill), with Richard Pryor and John Candy.
Theatre 3: "Streetwise" (Martin Bell), a documentary.
Theatre 4: "A Private Function" (†).

23rd St. West Triplex, 333 W. 23rd. (989-0060)
Theatre 1: "Perfect" (James Bridges), with John Travolta and Jamie Lee Curtis.
Theatre 2: "Witness" (†).
Theatre 3: "Rambo: First Blood Part II" (†).

Guild, 33 W. 50th. (757-2406)
Through June 13: "Sam's Son" (Michael Landon), with Eli Wallach.
From June 14: "Desperately Seeking Susan" (†).

Festival, 6 W. 57th. (757-2715)
"Lily in Love" (Karoly Makk), with Christopher Plummer and Maggie Smith.

57th St. Playhouse, 110 W. 57th. (581-7360)
"Pumping Iron II: The Women" (George Butler).

Paris, 4 W. 58th. (688-2013)
"Dangerous Moves" (†).

Cinema 3, 2 W. 59th. (752-5959)
"Lost in America" (†).

Loews Paramount, B'way at 61st. (247-5070)
June 12: "Movers and Shakers" (William Asher), with Walter Matthau and Charles Grodin.
From June 13: "Fletch" (Michael Ritchie), with Chevy Chase.

Lincoln Plaza 1, 2, and 3, B'way at 63rd. (757-2280)
Theatre 1: "Amadeus" (†).
Theatre 2: "Streetwise" (Martin Bell), a documentary.
Theatre 3: "Jules and Jim" (†).

Cinema Studio 1 and 2, B'way at 66th. (877-4040)
Theatre 1: "The Holy Innocents" (Mario Camus; in Spanish).
Theatre 2: "The Purple Rose of Cairo" (†).

Embassy 72nd St. 1 and 2, B'way at 72nd. (724-6745)
Theatre 1: "Secret Honor" (Robert Altman).
Theatre 2: "Goodbye, New York" (Amos Kollek), with Julie Hagerty and Kollek.

Loews 84th Street Sixplex, B'way at 84th. (877-3600)
Theatre 1: Through June 13: "Brewster's Millions" (Walter Hill), with Richard Pryor and John Candy. From June 14: To be announced.
Theatre 2: Through June 13: "Rambo: First Blood Part II" (†). From June 14: To be announced.
Theatre 3: Through June 13: "A View to a Kill" (†). From June 14: To be announced.
Theatre 4: Through June 13: "Fletch" (Michael Ritchie), with Chevy Chase. From June 14: To be announced.
Theatre 5: Through June 13: "The Goonies" (Richard Donner). From June 14: To be announced.
Theatre 6: Through June 13: "Desperately Seeking Susan" (†). From June 14: To be announced.

Metro Cinema, B'way at 99th. (222-1200)
"Perfect" (James Bridges), with John Travolta and Jamie Lee Curtis.

Olympia Quad, B'way at 107th. (865-8128)
Theatre 1: "Rambo: First Blood Part II" (†).
Theatre 2: "Brewster's Millions" (Walter Hill), with Richard Pryor and John Candy.
Theatre 3: Through June 20: "Desperately Seeking Susan" (†). From June 21: "Lifeforce" (Tobe Hooper), with Steve Railsback.
Theatre 4: Through June 13: "Lily in Love" (Karoly Makk), with Christopher Plummer and Maggie Smith. From June 14: "Secret

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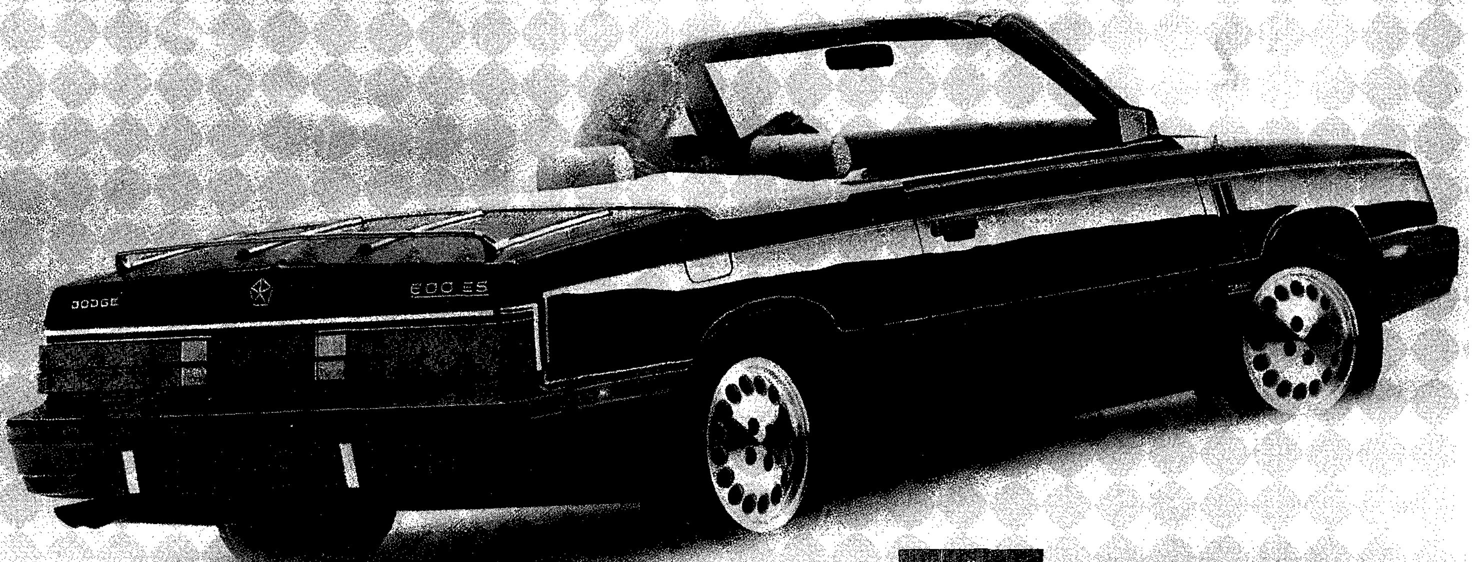

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"Admirer" (David Greenwalt), with C. Thomas Howell.

TIMES SQUARE AREA

Criterion Theatres, B'way at 44th. (354-0900)

Theatre 1: "The Goonies" (directed by Richard Donner).

Theatre 2: Through June 20: "Police Academy 2: Their First Assignment" (Jerry Paris), with Steve Guttenberg. From June 20: "Cocoon" (Ron Howard), with Don Ameche and Wilford Brimley.

Theatre 3: Through June 20: "Gotcha!" (Jeff Kanew), with Anthony Edwards. From June 20: "Police Academy 2: Their First Assignment."

Theatre 4: "Mask" (Peter Bogdanovich), with Cher, Eric Stoltz, and Sam Elliott.

Theatre 5: Through June 13: "Night Train to Terror." From June 14: "Desperately Seeking Susan" (†).

Theatre 6: Through June 20: "The Killing Fields" (†). From June 21: "Code of Silence" (Andy Davis), with Chuck Norris.

Embassy 1, B'way at 46th. (757-2408)

Through June 13: "The Last Dragon" (Michael Schultz).

From June 14: "Cannibal Holocaust."

Embassy 2, 3, and 4, B'way at 47th. (730-7262)

Theatre 2: "Witness" (†).

Theatre 3: "Beverly Hills Cop" (†).

Theatre 4: Through June 13: "Just One of the Guys" (Lisa Gottlieb). From June 14: "The Last Dragon" (Michael Schultz).

Loews Astor Plaza, B'way at 44th. (869-8340)

Through June 13: "A View to a Kill" (†).

From June 14: To be announced.

Loews State 1 and 2, B'way at 45th. (575-5060)

Theatre 1: Through June 13: "Fletch" (Michael Ritchie), with Chevy Chase. From June 14: To be announced.

Theatre 2: Through June 13: "Brewster's Millions" (Walter Hill), with Richard Pryor and John Candy. From June 14: To be announced.

Movieland, B'way at 47th. (757-8320)

Through June 13: "Desperately Seeking Susan" (†).

From June 14: "Secret Admirer" (David Greenwalt), with C. Thomas Howell.

New Embassy 49th Street, Seventh Ave. at 49th. (757-7003)

"The Care Bears Movie" (Arna Selznick), an animated film.

R.K.O. Century National Twin, B'way at 44th. (869-0950)

Theatre 1: Through June 13: "Yellow Hair and the Fortress of Gold." From June 14: "Prizzi's Honor" (John Huston), with Jack Nicholson and Kathleen Turner.

Theatre 2: Through June 13: "Silent Madness" (Simon Nuchtern), with Belinda Montgomery; and "Superstition" (James Roberson), with James Houghton and Albert Salmi. From June 14: "Prizzi's Honor."

R.K.O. Century Warner Twin, B'way at 47th. (975-8369)

Theatre 1: "Rambo: First Blood Part II" (†).

Theatre 2: "Rambo: First Blood Part II" (†).

U. A. Twin 1 and 2, B'way at 49th. (247-1635)

Theatre 1: "Perfect" (James Bridges), with John Travolta and Jamie Lee Curtis.

Theatre 2: Through June 20: "Code of Silence" (Andy Davis), with Chuck Norris. From June 21: "Lifeforce" (Tobe Hooper), with Steve Railsback.

REVIVAL HOUSES

Agee Room, 144 Bleecker St. (674-2560; on Mondays through Fridays, theatre opens in the late afternoon.)

"Enormous Changes at the Last Minute" (1983; directed by Ellen Hovde and Mirra Bank).

Bleecker St. Cinema, 144 Bleecker St. (674-2560; on Mondays through Fridays, theatre opens in the late afternoon.)

Through June 13: "The Trouble with Harry" (1955; Alfred Hitchcock), with Edmund Gwenn, John Forsythe, and Shirley MacLaine; and "Family Plot" (1976; Alfred Hitchcock), with Karen Black, Bruce Dern, Barbara Harris, and William Devane.

From June 14: "Desperately Seeking Susan" (†).

Carnegie Hall Cinema, 7th Ave. at 57th. (757-2131)

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Through June 15: A program of Federico Fellini films.

June 16: "The Seven Samurai" (1954; Akira Kurosawa; in Japanese), with Toshiro Mifune.

June 17: "Floating Weeds" (†) and "Fires on the Plain" (†).

June 18: "Odd Obsession" (†); and "Sandakan 8" (1974; Kei Kumai; in Japanese).

June 19: "Ugetsu" (†) and "Street of Shame" (†).

June 20: "Demon Seed" (1982; Masahiro Shinoda; in Japanese), with Tamasaburo Bando; and "The Ballad of Orin" (1979; Masahiro Shinoda; in Japanese), with Shima Iwashita.

June 21-22: "Rashomon" (1951; Akira Kurosawa; in Japanese), with Toshiro Mifune, Machiko Kyo, Masayuki Mori, and Takashi Shimura; and "Dodes'ka-den" (1971; Akira Kurosawa; in Japanese).

Cinema Village, 22 E. 12th. (924-3363)

Through June 13: "The Texas Chain Saw Massacre" (1974; Tobe Hooper), with Marilyn Burns; and "The Hills Have Eyes" (1977; Wes Craven), with Susan Lanier and Robert Houston.

June 14-15: "All of Me" (1984; Carl Reiner), with Steve Martin and Lily Tomlin; and "Dead Men Don't Wear Plaid" (1982; Carl Reiner), with Steve Martin and Rachel Ward.

June 16: "On the Waterfront" (1954; Elia Kazan), with Marlon Brando, Lee J. Cobb, Eva Marie Saint, Karl Malden, and Rod Steiger; and "A Streetcar Named Desire" (1951; Elia Kazan), with Vivien Leigh, Marlon Brando, Kim Hunter, and Karl Malden.

June 17-18: A program of erotic films; and "Immoral Tales" (1976; Walerian Borowczyk).

June 19-20: "The Exorcist" (1973; William Friedkin), with Ellen Burstyn, Max von Sydow, Lee J. Cobb, and Linda Blair; and "Village of the Damned" (†).

June 21-22: "Harold and Maude" (1971; Hal Ashby), with Ruth Gordon and Bud Cort; and "King of Hearts" (1967; Philippe de Broca; in French and English), with Alan Bates and Geneviève Bujold.

8th St. Playhouse, 52 W. 8th. (674-6515; Mondays through Fridays, theatre opens in the late afternoon.)

Through June 20: "Beverly Hills Cop" (†); and "Rustlers' Rhapsody" (1985; Hugh Wilson), with Tom Berenger.

From June 21: "2001: A Space Odyssey" (1968; Stanley Kubrick), with Keir Dullea and Gary Lockwood.

Hollywood Twin Cinema 1, 8th Ave. at 47th. (246-0717)

Through June 13: "Desperate Living" (1977; John Waters), with Edith Massey, Mink Stole, and Mary Vivian Pearce; and "Lust in the Dust" (1985; Paul Bartel), with Tab Hunter and Lainie Kazan.

June 14-15: "2010" (1984; Peter Hyams), with Roy Scheider; and "Dreamscape" (1984; Joseph Ruben), with Dennis Quaid and Kate Capshaw.

June 16: "Country" (1984; Richard Pearce), with Jessica Lange and Sam Shepard; and "Frances" (1982; Graeme Clifford), with Jessica Lange and Sam Shepard.

June 17-18: "Rumble Fish" (1983; Francis Coppola), with Matt Dillon and Mickey Rourke; and "The Outsiders" (1983; Francis Coppola), with Matt Dillon.

June 19-20: "Yojimbo" (1961) and "Throne of Blood" (1957), both films in Japanese, directed by Akira Kurosawa, with Toshiro Mifune.

June 21-22: "Breakfast at Tiffany's" (1961; Blake Edwards), with Audrey Hepburn, George Peppard, Patricia Neal, Martin Balsam, and Mickey Rooney; and "Charade" (1963; Stanley Donen), with Cary Grant, Audrey Hepburn, and Walter Matthau.

Hollywood Twin Cinema 2, 8th Ave. at 47th. (246-0717)

Through June 13: "The Sure Thing" (1985; Rob Reiner), with John Cusack; and "This Is Spinal Tap" (1984; Rob Reiner), with Reiner and Christopher Guest.

From June 14: To be announced.

Regency, B'way at 67th. (724-3700)

June 12: "The Innocents" (1961; Jack Clayton), with Deborah Kerr and Michael Redgrave; and "The Nanny" (1965; Seth Holt), with Bette Davis.

June 13: "Charlie Chan at Treasure Island" (1939; Norman Foster), with Sidney Toler as Chan; "Think Fast, Mr. Moto" (1937; Norman Foster), with Peter Lorre as Moto; and "Michael Shayne, Private Detective" (1940; Eugene Forde), with Lloyd Nolan as Shayne.

June 14-15: "The Best of Everything" (1959; Jean Negulesco), with Hope Lange and Stephen Boyd; and "Desk Set" (1957; Walter Lang), with Spencer Tracy, Katharine Hepburn, Gig Young, and Joan Blondell.

June 16-17: "How Green Was My Valley" (†); and "The Mudlark" (1950; Jean Negulesco), with Irene Dunne and Alec Guinness.

June 18-19: "Harry & Tonto" (†) and "Breaking Away" (†).

June 20-22: "The Seven Year Itch" (1955; Billy Wilder), with Marilyn Monroe, Tom Ewell, Victor Moore, Evelyn Keyes, and Sonny Tufts; and "Bus Stop" (†).

Thalia, B'way at 95th. (222-3370)

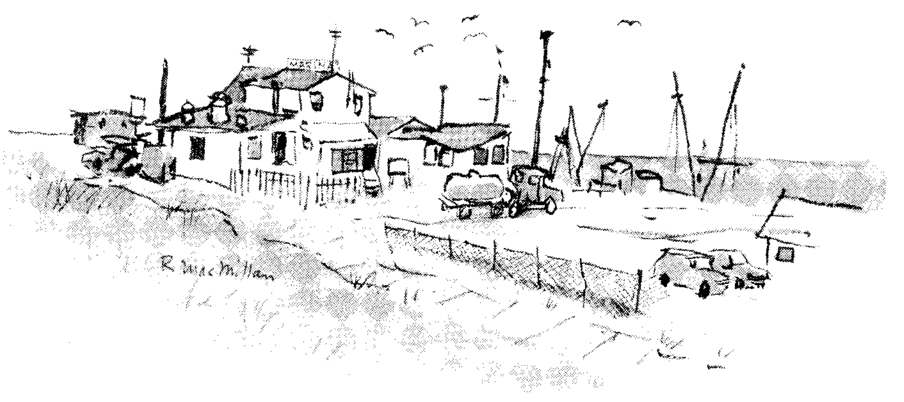
June 12: "Don's Party" (1982; Bruce Beresford; an Australian film), with John Hargreaves; and "Barry McKenzie Holds His Own" (1975; Bruce Beresford; an Australian film), with Barry Humphries.

June 13: "WR—Mysteries of the Organism" (1971; Dusan Makavejev; a Yugoslav film, with English subtitles and dialogue); and "Montenegro" (1981; Dusan Makavejev), with Susan Anspach and Erland Josephson.

June 14: "Variety" (1985; Bette Gordon); and "Born in Flames" (1983; Lizzie Borden).

June 15: "Breathless" (1959; Jean-Luc Godard; in French), with Jean Seberg and Jean-Paul Belmondo; and "Bonjour Tristesse" (1958; Otto Preminger), with Deborah Kerr, David Niven, and Jean Seberg.

June 16: "Cries and Whispers" (1972; Ing-



mar Bergman; in Swedish), with Liv Ullmann, Harriet Andersson, Ingrid Thulin, and Kari Sylwan; and "After the Rehearsal" (1984; Ingmar Bergman; in Swedish), with Erland Josephson and Ingrid Thulin.

June 17: A program of Chuck Jones cartoons.

June 18: "Boy! What a Girl" (1946; Arthur Leonard), with Tim Moore; and "Turnabout" (1940; Hal Roach), with Adolphe Menjou and Carole Landis.

June 19: "Diner" (1982; Barry Levinson), with Daniel Stern, Steve Guttenberg, and Mickey Rourke; and "American Graffiti" (†).

June 20: "Les Enfants Terribles" ("The Strange Ones;" 1949; Jean-Pierre Melville; in French), with Nicole Stéphane, Edouard Dermithe, and Renée Cosima; and "The Blood of a Poet" (1930; Jean Cocteau; in French).

June 21-22: "Demon Lover Diary" (1980; Joel DeMott and Jeff Kreines); and "Document of the Dead" (1979; Roy Frumkes).

Theatre 80 St. Marks, *80 St. Marks Pl. (254-7400)*

June 12: "The Power and the Glory" (1933; Preston Sturges), with Spencer Tracy and Colleen Moore; and "Dante's Inferno" (1935; Harry Lachman), with Spencer Tracy and Claire Trevor.

June 13: "The Rules of the Game" (1939; Jean Renoir; in French), with Marcel Dalio and Nora Gregor; and "Pépé le Moko" (1937; Julien Duvivier; in French), with Jean Gabin, Mireille Balin, and Marcel Dalio.

June 14-15: "Young and Innocent" ("The Girl Was Young;" 1937; Alfred Hitchcock), with Derrick de Marney, Nova Pilbeam, Basil Radford, Percy Marmont, and Mary Clare; and "Murder" (1930; Alfred Hitchcock), with Herbert Marshall and Norah Baring.

June 16: "Twentieth Century" (1934; Howard Hawks), with John Barrymore, Carole Lombard, and Ralph Forbes; and "It Happened One Night" (1934; Frank Capra), with Claudette Colbert, Clark Gable, Walter Connolly, Roscoe Karns, and Alan Hale.

June 17: "The Last Metro" (1981; François Truffaut; in French), with Catherine Deneuve, Gérard Depardieu, and Jean Poiret; and "The Woman Next Door" (1981; François Truffaut; in French), with Gérard Depardieu and Fanny Ardant.

June 18: "You Can't Take It with You" (1938; Frank Capra), with Jean Arthur, James Stewart, Lionel Barrymore, and Edward Arnold; and "The Awful Truth" (1937; Leo McCarey), with Irene Dunne, Cary Grant, and Ralph Bellamy.

June 19: "Red Dust" (†); and "Bombshell" (1933; Victor Fleming), with Jean Harlow, Franchot Tone, Lee Tracy, and Frank Morgan.

June 20: "Pygmalion" (1938; Anthony Asquith and Leslie Howard), with Howard and Wendy Hiller; and "Major Barbara" (1941; Gabriel Pascal), with Rex Harrison, Wendy Hiller, Robert Morley, Sybil Thorndike, and Robert Newton.

June 21-22: "Harold and Maude" (1971; Hal Ashby), with Ruth Gordon and Bud Cort; and "Where's Poppa?" (1970; Carl Reiner), with George Segal, Ruth Gordon, and Trish Van Devere.

FILM LIBRARIES, ETC.

Museum of Modern Art, Roy and Niuta Titus Theatres, 11 W. 53rd St. (708-9490; a limited number of tickets are available to those *applying for them in person at the museum* after 11 on the day of the showing.)

THEATRE 1: June 13 at 2:30 and 6: "The Love of Jeanne Ney" (1927; directed by G. W. Pabst; a German silent film). . . . ¶ June 14 at 2:30: "East Lynne" (1913; Bert Haldane; a British silent film), with Blanche Forsythe and Fred Paul. . . . ¶ June 14 at 6: "Hamlet" (1913; E. Hay Plumb; a British silent film), with Sir Johnston Forbes-Robertson. . . . ¶ June 15 at 2: "Midshipman Easy" (1935; Carol Reed), with Hughie Green and Margaret Lockwood. . . . ¶ June 15 at 5: "Loyalties" (1933; Basil Dean), with Basil Rathbone and Heather Thatcher. . . . ¶ June 16 at 2: "Comin' Thro' the Rye" (1923; Cecil M. Hepworth; a British silent film), with James Carew. . . . ¶ June 16 at 5: "The Vortex" (1928; Adrian Brunel; a British silent film), with Ivor Novello. . . . ¶ June 17 at 2:30: "David Copperfield" (1913; Thomas Bentley; a British silent film), with Kenneth Ware. . . . ¶ June 17 at 6: "East Lynne." . . . ¶ June 18 at 2:30: "The Vortex." . . . ¶ June 18 at 6: "David Copperfield." . . . ¶ June 20 at 2:30 and 6: "Sunrise" (1927; F. W. Murnau; a silent film). . . . ¶ June 21 at 2:30: "Comin' Thro' the Rye." . . . ¶ June 22 at 2: "Pygmalion" (1938; Anthony Asquith and Leslie Howard), with Howard and Wendy Hiller. . . . ¶ June 22 at 5: "French Without Tears" (1939; Anthony Asquith), with Ray Milland and Ellen Drew.

THEATRE 2: June 13 at 3 and 6:30: "Small Happiness: Women of a Chinese Village" (1984; Carma Hinton and Richard Gordon), a documentary. . . . ¶ June 14 at 3: "The Wreaths at the Foot of the Mountain" (1984; Xie Jin; in Chinese, with English subtitles). . . . ¶ June 14 at 6:30: "Ah, Cradle" (1980; Xie Jin; in Chinese, with English subtitles). . . . ¶ June 15 at 2:30: "The Herdsman" (1982; Xie Jin; in Chinese, with English subtitles). . . . ¶ June 15 at 5:30: "Youth" (1977; Xie Jin; in Chinese, with English subtitles). . . . ¶ June 16 at 2:30: "The Legend of Tianyuan Mountain" (1981; Xie Jin; in Chinese, with English subtitles). . . . ¶ June 16 at 5:30: "The Wreaths at the Foot of the Mountain." . . . ¶ *June 17 at 6:30: A program of films* by Barry Gerson, who will be present. . . . ¶ June 18 at 3 and 6:30: "Angels with Dirty Faces" (1938; Michael Curtiz), with James Cagney, Pat O'Brien, Humphrey Bogart, and Ann Sheridan. . . . ¶ June 20 at 3 and 6:30: "The Real Thing" (1984; Peter *Schnall) and "1877, The Grand Army of* Starvation" (1985; Stephen Brier), both documentaries. . . . ¶ June 21 at 3: "Cameo Kirby" (1923; John Ford; a silent film), with John Gilbert, Gertrude Olmstead, and Jean Arthur. . . . ¶ June 21 at 6:30 and June 22 at 2:30: "Man, Woman, and Sin" (1927; Monta Bell; a silent film), with John Gilbert and Jeanne Eagels. . . . ¶ June 22 at 5:30: "Flesh and the Devil" (1927; Clarence Brown; a silent film), with John Gilbert, Greta Garbo, and Lars Hanson.

Whitney Museum, Madison Ave. at 75th St. (570-0537)—A two-week program of films by black independent filmmakers. June 18 at 1:30 and 6:30 and June 21 at noon: "A Place in Time" (1977; Charles Lane) and "Death of a Dunbar Girl" (1974; Henry Miller). . . . ¶ June 18 at 3:30 and June 21 at 2: "Color" (1982; Warrington Hudlin) and "Bless Their Little Hearts" (1983; Bill Woodberry). . . . ¶ June 19 and June 22 at noon: "From Harlem to Harvard" (1982; Marco Williams) and "Shipley Street" (1981; Jacqueline A. Frazier). . . . ¶ June 19 and June 22 at 2: "The Sky Is Grey" (1980; Stan Lathan) and "Ali, the Fighter" (1971; William Greaves). . . . ¶ June 20 at noon: "The Nightmare" (1980; John Perry III) and "A Dream Is What You Wake Up From" (1979; Sarah Gomez and Josina Michael). . . . ¶ June 20 at 2: "A Different Image" (1982; Alile Sharon Larkin) and "Sky Captain" (1984; Mary Neema Barnett). Closed Mondays.

IN BRIEF

SEE ABOVE FOR THEATRE ADDRESSES AND TELEPHONE NUMBERS.
IF A MOVIE HAS BEEN REVIEWED IN THESE PAGES DURING THE PAST TWO YEARS, THE DATE OF ITS REVIEW IS GIVEN.

Alphaville (1965)—Jean-Luç Godard ventures into science fiction, with mixed results. The picture is brilliant, yet it's no good. At first, the dehumanization is funny and alluring and a little eerie, but the people of Alphaville are ruled by a giant computer, and soullessness can be very monotonous. The movie was shot at night, and it seems to give off powerfully soporific vapors, especially since the comic-strip story is an uninspired mixture of sci-fi and private eye that never takes hold. With Eddie Constantine as cool, tough Lemmy Caution (his face is so tired and leathery he's like an old shoe), Anna Karina as the most radiant of robots, and Akim Tamiroff, Laszlo Szabo, Michel Delahaye, and Howard Vernon. Written and directed by Godard. In French. (Little Theatre, Public Theatre; through June 20.)

Amadeus—The lofty playwright Peter Shaffer has the minor composer Salieri (F. Murray Abraham) declaring war on Heaven for gypping him, and determined to ruin the incomparable Wolfgang Amadeus Mozart (Tom Hulce) because God's voice is speaking through him. The director, Miloš Forman, trudges through the movie as if every step were a major contribution to art, and he keeps the audience hooked. Some redeeming qualities: Mozart's music, Twyla Tharp's staging of the dances and opera excerpts, and Abraham's eager, slimy Salieri. (Reviewed in our issue of 10/29/84) (Lincoln Plaza. . . . ¶ Gemini; through June 20.)

American Graffiti (1973)—The second feature film by the young George Lucas, about the teen-age world of 1962 in small-town Northern California. We again inhabit the post-McCarthy, pre-Vietnam-protest land of *drive-ins, old cars dangerously raced,* Elvis haircuts, ritual necking. We live through a long night and dawn with the kids, but the next day comes up, and decisions have to be made about taking planes East to college and hiding homesickness. Flashy photography, perhaps more film knowledge than the film can use, but worth seeing. (Thalia; June 19.)

Beverly Hills Cop—The plot is just a peg for little set pieces in which the street-smart Eddie Murphy, in his worn-out sweatshirts, saunters through swank Beverly Hills locations, tells whopping lies, and outsmarts the white dumbos. Hotfooting the picture to keep it going, he rattles off pitifully undistinguished profanity, but we're cued to react to every stupid four-letter word as riotous. With Judge Reinhold, Stephen Elliott, Bronson Pinchot, Ronny Cox, Steven Berkoff, Lisa Eilbacher, and John Ashton. Directed by Martin Brest. (12/24/84) (Embassy. . . . ¶ 8th St. Playhouse; through June 20.)

Breaking Away (1979)—A cheerful comedy about four high-school graduates (Dennis Christopher, Dennis Quaid, Daniel Stern, and Jackie Earle Haley) who don't know what to do next. Paul Dooley and Barbara Barrie play a set of parents with confused notions about progress. Directed by Peter Yates, with affection for the middle class, the landscape of Indiana, and bicycle racing. (Regency; June 18-19.)

Bus Stop (1956)—See this not for the William Inge play, shrewdly widened by George Axelrod, but for Marilyn Monroe and Eileen Heckart. Don Murray plays a dimly ardent cowboy. (Regency; June 20-22.)

Dangerous Moves—This Swiss picture is about a world-championship chess match held in Geneva between the longtime titleholder (Michel Piccoli), a courtly and cagey gray-bearded Russian Jew from the Soviet Union, and his former pupil, the handsome, high-strung challenger (Alexander Arbatt), a young Lithuanian who defected from the Soviet Union and now lives in France. At first, the young man's flamboyance and the older man's seething anger put us in an expectant mood, but the film turns into an uninspired account of the psychological pressures put on the contestants, who are both being manipulated by the Soviet bureaucracy. And after the arrival of the young man's wife (Liv Ullmann), who is sent from a psychiatric hospital in Moscow to Geneva to upset him, the picture caves in on itself. Even Piccoli, who gives a cunning, authoritative performance, has no chance to wing past the pedantry of the conception. Written by Richard Dembo, who makes his début as a director; the cinematography is by Raoul Coutard. With Leslie Caron in the dismal role of Piccoli's earnest, devoted wife, and Bernhard Wicki as the monitor. In French. (6/3/85) (Paris.)

Desperately Seeking Susan—Set in the punk

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world, it's a mistaken-identity fantasy about doe-eyed Roberta (Rosanna Arquette), a suburban housewife in New Jersey, who becomes fixated on a drifter named Susan (played by the rock star Madonna). This attempt at screwball charm was directed by Susan Seidelman, who wipes out her actors. All their responsiveness is cut off—there's nothing going on in them. No subtext—nothing. Nobody comes through except Madonna, who comes through as Madonna (she moves regally, an indolent, trampy goddess), and the cinematographer Edward Lachman, whose lighting gives the East Village shops and streets a funky prettiness. The cast includes Robert Joy, Aidan Quinn, Mark Blum, Laurie Metcalf, and the comedian Steven Wright. (4/22/85) (Loews 34th Street Showplace, Eastside Cinema, Loews 84th Street Sixplex, and Movieland; through June 13. . . . ¶ U. A. 85th St. East, and Olympia Quad; through June 20. . . . ¶ Guild, Criterion Theatres, and Bleecker St. Cinema; starting June 14.)

Fires on the Plain (1959)—Based on the book by Shohei Ooka, which is said to be the greatest Japanese novel to have come out of the Second World War, this film, set on Leyte, is an obsessive cry of disgust. It's an appalling picture; it's also a work of epic poetry. The subject is modern man as a cannibal, and after a few minutes this subject doesn't seem at all strange or bizarre: it seems, rather, to be basic. Tamura, the hero, is one of the stragglers of the disintegrating retreating Japanese Army—terrified of the Americans, the Filipinos, and of each other. In the middle of this desolation, there are bonfires—ambiguous flames in the distance that kindle hope. At the end, Tamura approaches the flames and his last illusion is dispelled. The passion that informs the character of Tamura is so intense that he seems both painfully close to us and remote—detached from what is ordinarily thought of as emotion. The atmosphere of the film is also remote from our ordinary world: there is nothing banal, nothing extraneous to the single-minded view of man in extremis. Directed by Kon Ichikawa; the script is by his wife, Natto Wada. It's a masterpiece. In Japanese. (Carnegie Hall Cinema; June 17.)

Floating Weeds (1959)—Machiko Kyo in a story about the jealousies and liaisons within a troupe of travelling actors. Directed by Yasujiro Ozu; in Japanese. (Carnegie Hall Cinema; June 17.)

Harry & Tonto (1974)—Directed by Paul Mazursky and written by him with Josh Greenfeld. Harry (Art Carney) is a limping old man with a buoyant spirit who buys cheap food for himself and good liver for his cat, a heavyset marmalade companion called Tonto. The old Lear has three disappointing children strung across the country, and after visiting them he decides that they represent a rope on his liberty. The narrative sounds sentimental, but the film isn't. (Regency; June 18-19.)

How Green Was My Valley (1941)—John Ford's much-honored movie about the decline of a Welsh mining family is moving and impressive in a big-Hollywood-picture way. Roddy McDowall and Walter Pidgeon are the leads, and the cast includes Maureen O'Hara, Sara Allgood, Barry Fitzgerald, and many other Irish actors (though the singers are really Welsh). (Regency; June 16-17.)

Jules and Jim (1962)—François Truffaut's celebration of bohemian life in France and Germany in the years of artistic ferment between the First World War and the Second. The Austrian, Jules (Oskar Werner), and the Frenchman, Jim (Henri Serre), have a peaceful friendship. But when they are with Catherine (Jeanne Moreau) they feel alive; anything may happen. She's the catalyst, the troublemaker, the source of despair as well as the source of joy, an enchantress. Catherine marries Jules, who can't hold her, and, in despair, he encourages Jim's interest in her—"that way, she'll still be *ours*." She insists on her freedom to leave men, but if they leave her (as Jim does) she is as devastated and as helpless as any clinging vine (perhaps *more* devastated—she can't even ask for sympathy). Elliptical, full of wit and radiance, this is the best movie ever made about what most of us think of as the Scott Fitzgerald period. In French. (Lincoln Plaza.)

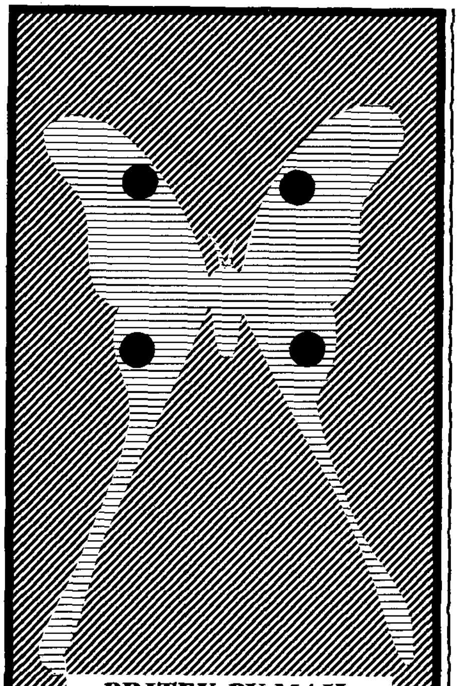
The Killing Fields—The British film shows us the Khmer Rouge transforming Cambodia into a nationwide gulag, and the scenes of this genocidal revolution have the breadth and terror of something deeply imagined. The movie tells the story of how Sydney Schanberg (Sam Waterston), who was the *Times* correspondent in Cambodia from 1972 to 1975, was separated from his interpreter and assistant, Pran (Haing S. Ngor), and of his remorse and general anguish until the wily, resourceful Pran, after four years of slave labor and hiding, made his way into Thailand, late in 1979, and got word to him. It's written like a TV docudrama, and it bogs down in the crosscutting between Pran's experiences of the atrocities in Cambodia and Schanberg's guilt and misery in various settings in the U.S. But it's by no means a negligible movie. Roland Joffé, making his début as a movie director, and the cinematographer, Chris Menges, give us imagery that suggests the work of a macabre lyric poet, and there are accomplished performances—most notably by John Malkovich, Bill Paterson, and Athol Fugard. (12/10/84) (Criterion Theatres; through June 20.)

Ladyhawke—Set in the Middle Ages, it's about the romance between Princess Isabeau (Michelle Pfeiffer) and the noble Navarre (Rutger Hauer), which is cursed by an evil sorcerer-bishop (John Wood). Each sunrise, Isabeau turns into a hawk; each sundown, Navarre turns into a black wolf. Just about everything connected with the movie is big except the storytelling instinct of its director, Richard Donner. It's a limp and dreary movie. The lovers are helped by a boy thief, played by Matthew Broderick, who is like a contemporary urban-American adolescent placed in medieval France—the effect is something like putting, say, a boy Woody Allen at Robert Taylor's elbow in "Ivanhoe." With Leo McKern and Ken Hutchison. (5/13/85) (Sutton; through June 13.)

Lost in America—Original and pleasantly snappy. It lacks the fullness of a major comedy, but Albert Brooks, who stars in it and directed, is on to something: satirizing the upper middle class from within, he shows the nagging terror along with the complacency. And he keeps you laughing fairly steadily. As David, an L.A. advertising whiz, he's an anxious wreck who tortures himself and his wife over every detail of his existence. With her little-girl breathiness and her look of panic, Julie Hagerty is an ideal choice for the timid, depressed woman who puts up with him. These two buy a luxury motor home, and, with the security of a nest egg of roughly a hundred and forty-five thousand dollars, set out to find themselves and get in touch with the real America. With Garry Marshall, Art Frankel, and Michael Greene. (4/8/85) (Cinema 3. . . . ¶ St. Marks Cinema; through June 13. . . . ¶ Film Forum; June 14-20.)

National Velvet (1944)—One of the most likable movies of all time. Under the direction of Clarence Brown, the twelve-year-old Elizabeth Taylor rings true on every line she speaks; she gives what is possibly her most dedicated performance as Velvet Brown, a little English girl who wins a horse in a village lottery and is obsessively determined to enter him in the Grand National. As the jockey who coaches Velvet, Mickey Rooney is very fine in some scenes; in others, he's a shade too professional, too ready with his lines. As Velvet's mother, Anne Revere is convincingly strong and daring. With Donald Crisp, Angela Lansbury, and Jackie (Butch) Jenkins. (Little Theatre, Public Theatre; starting June 21.)

Odd Obsession (1959)—Perverse in the best sense of the word. At the start, a young doctor, smug with sexual prowess, tells us that his patient, an aging man, is losing his virility. And the old man induces the young doctor, who is his daughter's suitor, to make love to his wife. By observing them, by artificially making himself jealous, the old man is able to raise his spirits a bit. The comedy, of course, is that the wife, superbly played by Machiko Kyo, is the traditional, obedient Japanese woman—and she coöperates in her husband's plan. She is so coöperative that, once aroused by the young doctor, she literally kills her old husband with kindness—she excites him to death. The film might better be called "The Keyhole." Everybody is spying on everybody else, and although each one conceals his motives and actions, nobody is fooled. The



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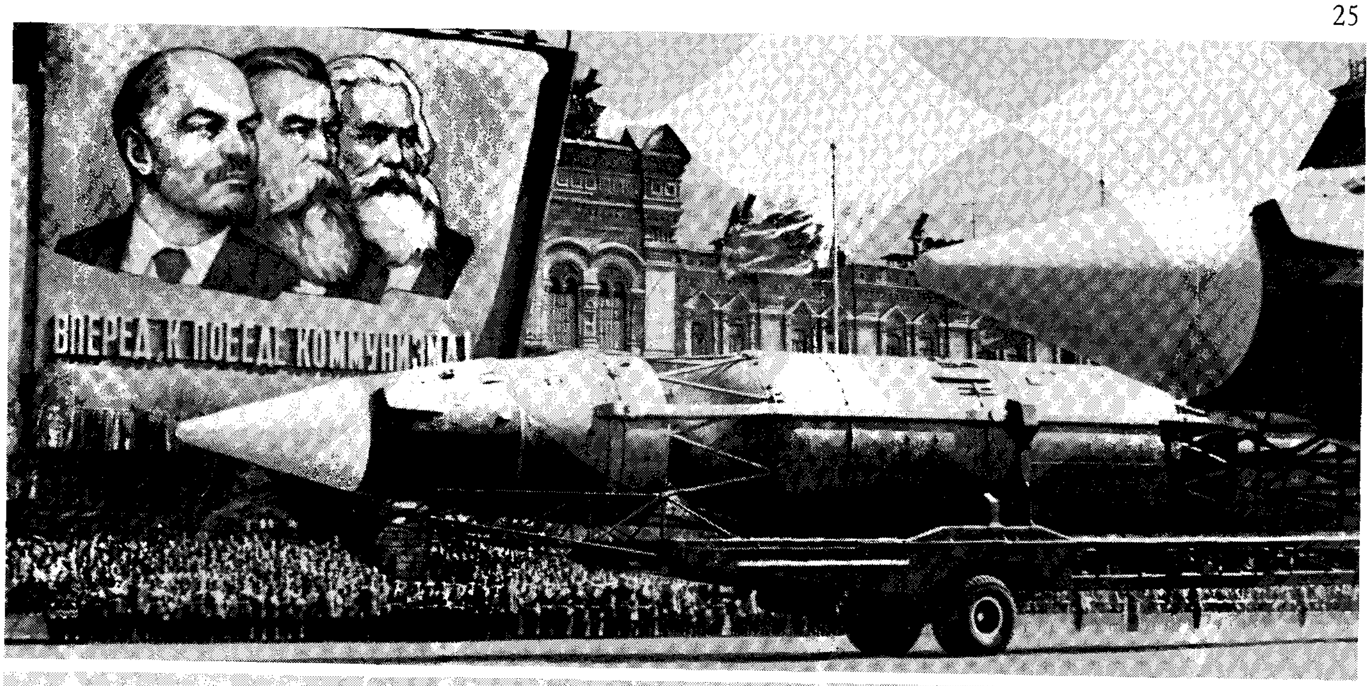

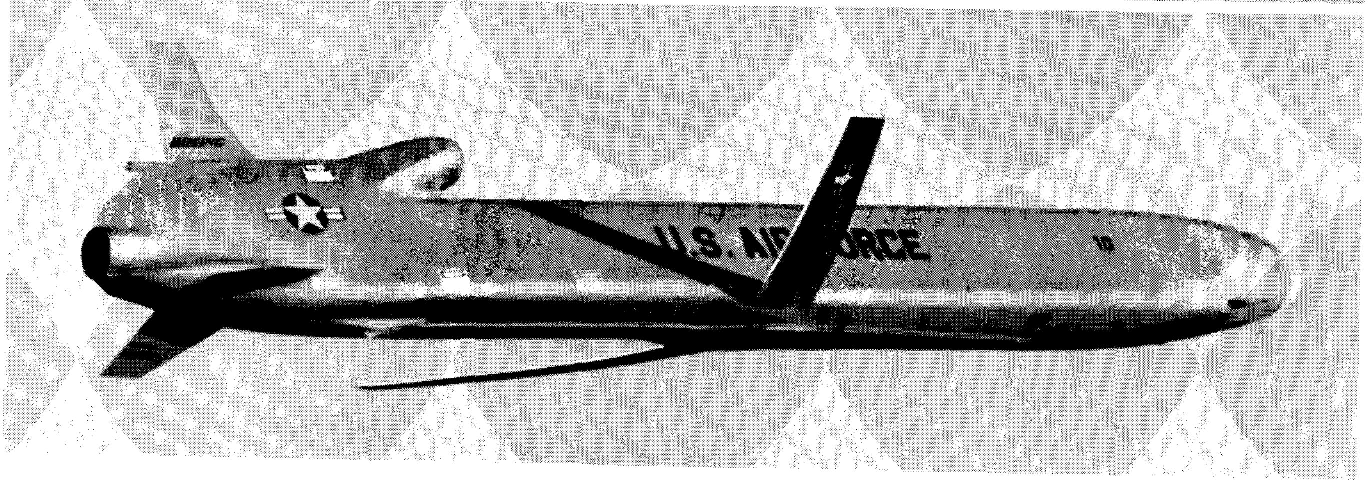

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screen is *our* keyhole, and we are the voyeurs who can see them all peeking at each other. As the mother, Machiko Kyo, with her soft, sloping shoulders and her rhythmic padding walk, is like some ancient erotic fantasy. Directed by Kon Ichikawa, this film about pornography would be just about perfect if it didn't have a stupid tacked-on ending. In Japanese. (Carnegie Hall Cinema; June 18.)

A Passage to India—This admirable version of E. M. Forster's 1924 novel about the tragicomedy of British colonial rule was adapted, directed, and edited by David Lean, who knows how to do pomp and the moral hideousness of empire better than practically anybody else around. Peggy Ashcroft comes through with a transcendent piece of acting as Mrs. Moore, and Judy Davis is close to perfection as the repressed Miss Quested, who longs for adventure; they are the two women whose attempt to get to know the Indians socially results in a charge of attempted rape against Dr. Aziz, played by Victor Banerjee, a fine, fluid actor who's like a piece of erotic sculpture. It may not be the highest praise to say that a movie is orderly and dignified, but of its kind this "Passage to India" is awfully good, until the last half hour or so; the concluding scenes wobble all over the place. The cast is just about irreproachable. It includes James Fox, Nigel Havers, Art Malik, Michael Culver, Saeed Jaffrey, Roshan Seth, and Sandra Hotz. (2 hours and 43 minutes.) (1/14/85) (86th St. East; through June 13. . . . ¶ Coronet; starting June 14.)

A Private Function—It never quite makes the final leap into lewd farce, but it's pretty funny anyway. The action is set in a small Yorkshire town in 1947, during the worst of the postwar austerity, and the plot involves the efforts of the local pillars of society (Denholm Elliott, John Normington, Richard Griffiths) to fatten a hidden, "unlicensed" pig for a banquet celebrating the nuptials of Princess Elizabeth and Prince Philip. They run into trouble when the pig is stolen by a mild-mannered chiropodist (Michael Palin), who is encouraged by his Lady Macbeth of a wife (Maggie Smith). The movie is trivial, but alive and unruly; the characters cheat and conspire on such a low level that it suggests "Volpone" set in a cabbage patch. With Liz Smith, Bill Paterson, and Rachel Davies. Directed by Malcolm Mowbray. (3/25/85) (Quad Cinema.)

The Purple Rose of Cairo—The thirteenth movie that Woody Allen has directed, and possibly his finest creation. He wrote it for Mia Farrow, and it seems scaled to her cheekbones. The time is 1935, and she is Cecilia, who lives in a small town in New Jersey and can't hold a job for long because her thoughts wander away to the glamorous worlds she sees on the screen. Jeff Daniels plays a dashing young screen character who bounds down from the black-and-white image and into color, and takes Cecilia out of the theatre with him; he's also the ambitious young actor who arrives in the town to try to persuade the character to go back up on the screen where he belongs. Also with Danny Aiello, Stephanie Farrow, Zoe Caldwell, John Wood, Ed Herrmann, Van Johnson, and Dianne Wiest. (3/25/85) (Waverly, and Cinema Studio. . . . ¶ Beekman; through June 13. . . . ¶ Eastside Cinema; starting June 14.)

Quest for Fire (1982)—Set eighty thousand years ago, this science fantasy is a full-length version of the ape-man prologue to "2001;" it's a heavy dose of Desmond ("Naked Ape") Morris, with blaring Dawn of Consciousness music. Naoh, Amoukar, and Gaw (Everett McGill, Ron Perlman, and Nameer El-Kadi), three warriors of the spear-carrying Ulam tribe, go out on the sacred mission of finding fire. As they fight off predatory animals and hideous, apier men, you begin to wish you could detect famous actors under all the makeup, the way you could in the Biblical spectaculars. If it weren't for the grisly close-ups of torn flesh, the picture might be taken for a put-on. What's fun in the movie is the makeup, and the way that the faces of the three warriors are simian and yet attractive. With Rae Dawn Chong. Directed by Jean-Jacques Annaud. Anthony Burgess "created" the "special languages" and Desmond Morris "created" the "body languages and gestures." (Gotham Cinema.)

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Rambo: First Blood Part II—With Sylvester Stallone and Richard Crenna, directed by George P. Cosmatos. (Reviewed in this issue.) (Bay Cinema, Gemini, R.K.O. Century 86th St. Twin, 23rd St. West Triplex, Olympia Quad, and R.K.O. Century Warner Twin. . . . ¶ Loews 84th Street Sixplex; through June 13.)

Red Dust (1932)—A sexy jungle melodrama from M-G-M, with Jean Harlow as a funny, tough girl who has been around, and an unshaven Clark Gable who thinks he prefers cool, ladylike Mary Astor. Harlow is immensely likable, delivering her zingy wisecracks with a wonderful kind of dirty good humor, and Gable is at that early peak in his career when he is so sizzlingly sexual that it seems both funny and natural for the two women to be fighting over him. Directed by Victor Fleming in a racy, action-packed style. With Gene Raymond, Tully Marshall, and Donald Crisp. (Theatre 80 St. Marks; June 19.)

The Sandpiper (1965)—At the time it was released, Richard Burton and Elizabeth Taylor had finally got married, and as Burton, looking more foreshortened than ever, eyed the portly Taylor in her Irene Sharaff poncho, and they delivered such lines as "I never knew what love was before" and "I've lost all my sense of sin," the people in the theatres could not contain themselves. Burton, an Episcopal clergyman, makes high-toned literary remarks to beatnik-atheist-artist Taylor, such as "I can't dispel you from my thoughts," and then, when he hates himself in the morning, she reassures him with "Don't you realize that what happened between us is *good*?" At the last, the clergyman, redeemed by contact with the atheist's spiritual values, casts off the temptations of wealth and worldly success and finds his simple faith again. If that isn't enough, there's Charles Bronson playing a sculptor. With Eva Marie Saint as the clergyman's wife; she says bright things like "Thinking is a kind of prayer, isn't it?" Directed by Vincente Minnelli. (Little Theatre, Public Theatre; starting June 21.)

The Shooting Party—Directed by Alan Bridges. (Reviewed in this issue.) (Cinema I.)

Street of Shame (1956)—Kenji Mizoguchi's ascetic view of the lives of the inhabitants of Tokyo's red-light district; with Machiko Kyo. In Japanese. (Carnegie Hall Cinema; June 19.)

Ugetsu (1953)—The director, Kenji Mizoguchi, handles the narrative in two styles: barbaric sequences dealing with greed and civil war that seem realistic except that the characters are deliberately animalistic and are symbolically acting out the bestial side of man; and highly stylized sequences dealing with the aesthetic, luxurious, and romantic modes of life. When the hero (Masayuki Mori), a grunting peasant potter, develops self-awareness and becomes an artist, the meanings multiply. When, in the midst of serene elegance, the phantom Lady Wakasa (Machiko Kyo) offers the potter-artist rarefied sensual delights, you know how he feels as he cries, "I never imagined such pleasures existed!" Heavy going in spots, but with marvellous passages that are worth a bit of patience. With Kinuyo Tanaka as the potter's wife. In Japanese. (Carnegie Hall Cinema; June 19.)

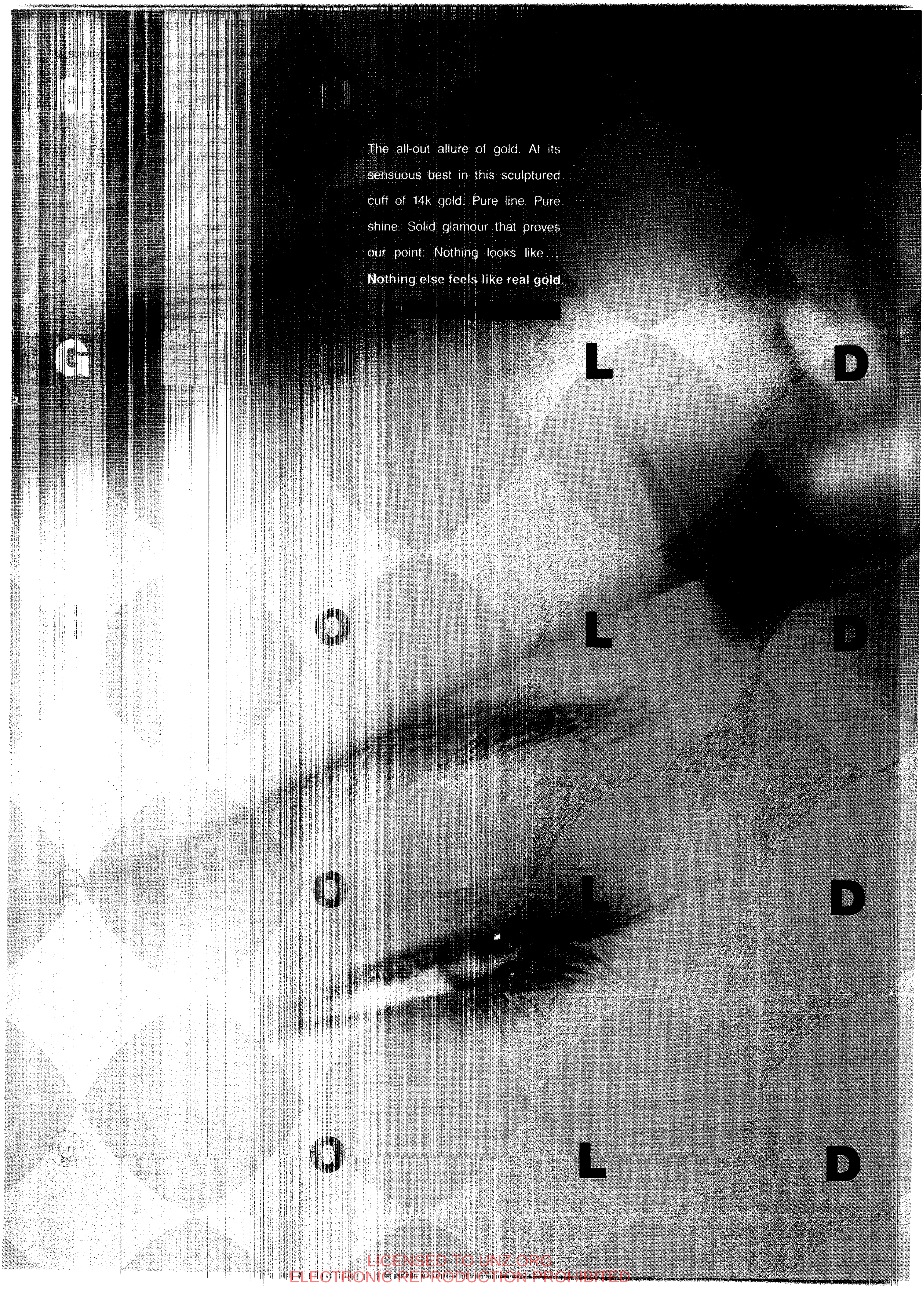
A View to a Kill—The James Bond series has had its bummers, but nothing before in the class of this one. The way the daredevil feats are set up, they don't give you the irresponsible, giddy tingle they should, and the dumb police-car crashes seem to have got in by mistake—they belong to a back-roads chase comedy. The villain, Christopher Walken, is the ultra-blond psychopathic product of a Nazi doctor's experiments, and his major endeavor is to flood Silicon Valley. All that keeps the picture going is that it needs to reach a certain heft to fit into the series. With Roger Moore in his seventh go-round as Bond, Grace Jones, Tanya Roberts, Patrick Macnee, Patrick Bauchau, and a stunning young model named Alison Doody. The action is set mostly in Chantilly, Paris, and San Francisco. Directed (dispiritedly) by John Glen; written (with an air of hopelessness) by Richard Maibaum and Michael G. Wilson. Title song by Duran Duran. (6/3/85) (Loews 34th Street Showplace, Loews New York Twin, Loews Orpheum, Loews 84th Street Sixplex, and Loews Astor Plaza; through June 13.)

Village of the Damned (1960)—A little-known thriller about wicked kids. It's clever and has some really chilling moments. George Sanders is the lead, and Martin Stephens is the scariest of the cold-eyed children from outer space. Directed by Wolf Rilla (a terrific name for the director of this particular film). (Cinema Village; June 19-20.)

What Have I Done to Deserve This!—This Spanish film by the bad-boy writer-director Pedro Almodóvar has an Off Off Broadway informality. It's a generally likable dadaist farce about working-class family life in Madrid's housing projects—huge block buildings of dinky, cramped apartments. The heroine, Gloria (Carmen Maura), drags herself through eighteen-hour days with the help of No Doz and an occasional sniff of glue or detergent. She goes out to work as a cleaning woman and also cooks and scrubs for her taxi-driver husband (who's a gifted forger and is involved in a scheme to fake Hitler's memoirs) and her two sons—a fourteen-year-old drug dealer and a twelve-year-old hustler who seduces his schoolmates' fathers. You'll probably never see a woozier treatment of the breakdown of the family and the decay of the society. The picture is like a slaphappy comic-strip version of "The Threepenny Opera." It's flip enough to be fairly amusing to watch, but it leaves you with not much to talk about. In Spanish. (6/3/85) (Quad Cinema.)

Who's Afraid of Virginia Woolf? (1966)—Edward Albee's play, turned into a very fine black-and-white film by Mike Nichols—his first piece of film direction, full of untamed wit and with no trace of the novice. Richard Burton, Elizabeth Taylor, Sandy Dennis, and George Segal are at their best, and Burton's best is extraordinary. (Little Theatre, Public Theatre; starting June 21.)

Witness—An eight-year-old Amish boy (Lukas Haas), on his first trip to a city, sees a murder taking place in the men's room of Philadelphia's Thirtieth Street train station. In order to protect the boy and his widowed mother (Kelly McGillis) from the killers, the police captain (Harrison Ford) who's in charge of the investigation tries to hide their identities, and, with a bullet wound in his side, drives them back to their farm in Lancaster County before he collapses. Directed by the Australian Peter Weir, the movie seems to take its view of the Amish from a quaint dreamland, a Brigadoon of tall golden wheat, and to take its squalid, hyped-up view of life in Philadelphia from prolonged exposure to TV cop shows. With Alexander Godunov, Patti LuPone, Josef Sommer, Danny Glover, and Jan Rubes. (2/25/85) (D. W. Griffith, 23rd St. West Triplex, and Embassy. . . . ¶ Loews New York Twin; through June 13.)



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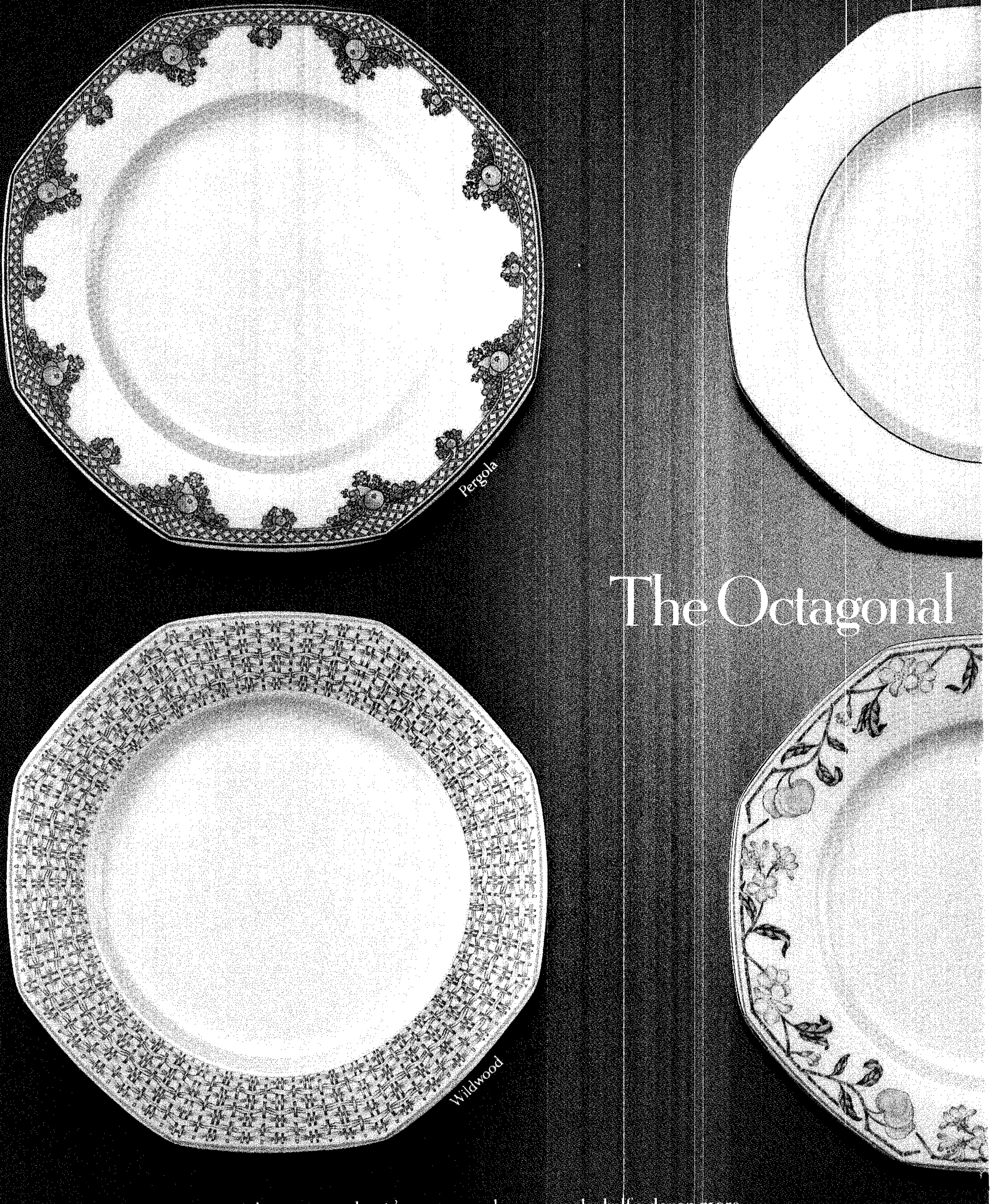

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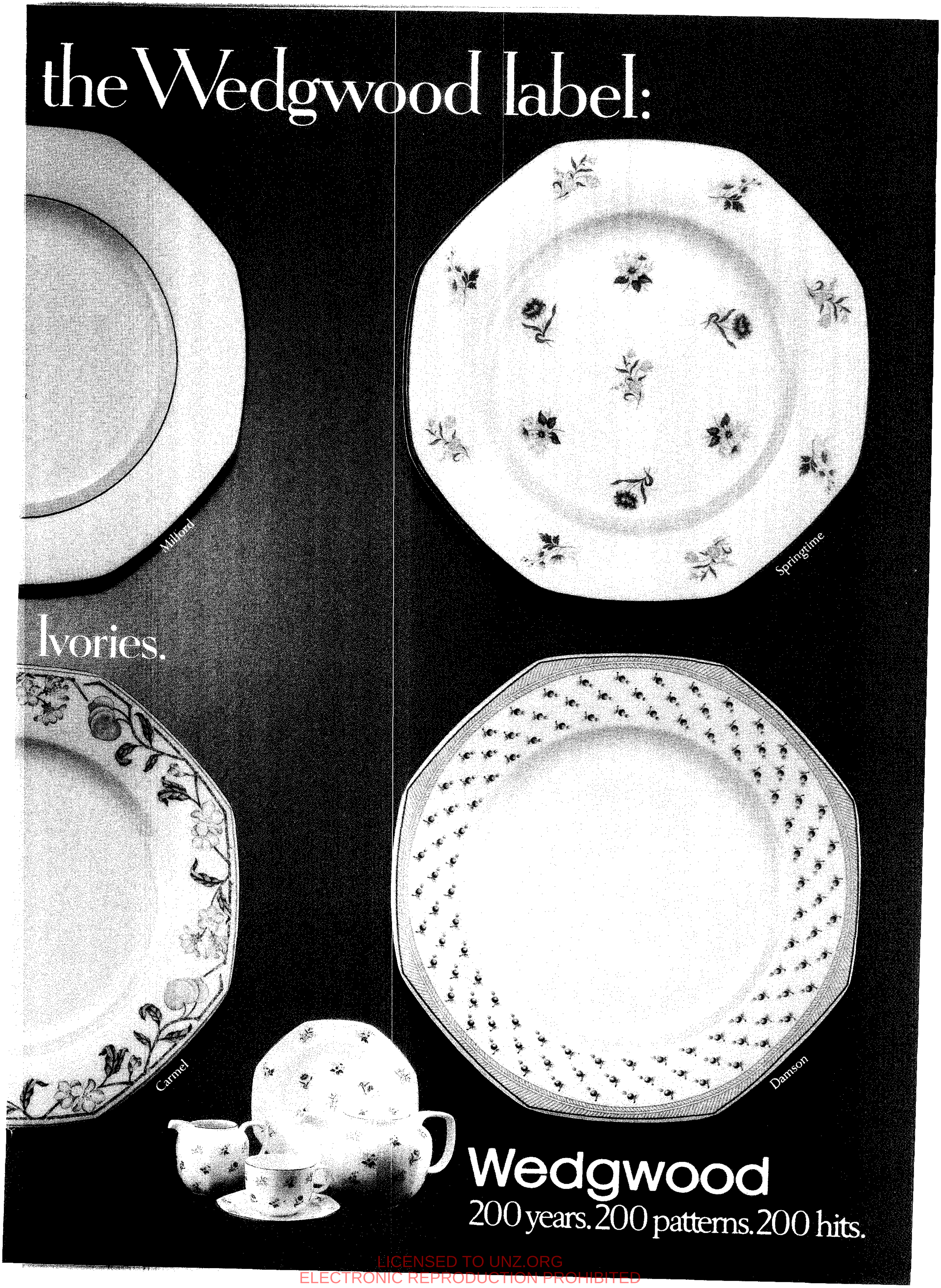
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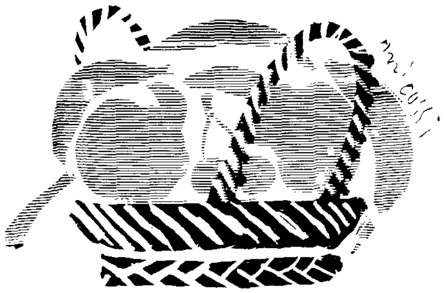
THE NEW YORKER

THE TALK OF THE TOWN

Notes and Comment

ON Tuesday of last week, in the first of two articles on American military policy in Nicaragua, the *Times* quoted "an intelligence official whose opinions have been solicited by members of the National Security Council" as saying that an American invasion of Nicaragua would be as easy as "falling off a log." The story described a new airfield at Palmerola, in the Honduran highlands west of Tegucigalpa, which was dedicated in February. The field, one of eight in the country, has an eight-thousand-foot, lighted, all-weather runway, which "shimmers like a mirage in the midst of a sprawling military town of wood huts, camouflaged anti-aircraft emplacements and repair shops." The story also noted that this year the United States Army's Southern Command is scheduled to receive a detachment of C-7 Caribou planes, which are capable of "landing troops or matériel" on any of nine hundred "tiny, undeveloped airstrips" in the region. According to the *Times*, "United States intelligence sources in the region have told their superiors in Washington that major Nicaraguan installations are lightly defended"—that thirteen potential targets in the Managua area are guarded only by 57-millimetre and 37-millimetre anti-aircraft guns—and therefore, one intelligence officer has said, "if proper tactics and proper ordnance were applied to those sites, they'd never know what hit them." Another "political military officer in the region" outlined for the *Times* the most plausible scenario in the event of a full-scale conflict: "The U.S. would come in heavily for a month or so, mostly with air strikes against major facilities. Then a new government would be put into place, and it would come with its own army." According to "several military analysts," the new government would have to deal with the Sandinistas, who might retreat to the hills and keep fighting, but this new government would probably benefit from "a program like El Salvador, advisers and assistance." The Sandinistas might not be much of a problem anyway, because, "one United States military officer who has briefed members of the National Security Council" said, the people who live in the mountains in Nicaragua don't like the Sandinistas and would chop their heads off. Military analysts said that another problem for the Sandinistas was that "Nicaragua has no counterpart to Vietnam's Ho Chi Minh Trail."

In the second article, the *Times* concentrated on the political, not the military, aspects of an American invasion, stating that "interviews with almost fifty" government experts in Washington, Panama, Costa Rica, Nicaragua, and Honduras "indicate that discussion of the issue has become commonplace in official circles," and that in the United States "the mood on Capitol Hill in the last few weeks appears to have shifted sharply against the Sandinista government." General Paul F. Gorman told Congress this winter that even if military aid for the Contras fighting the Sandinistas were renewed the rebels could not be expected to change the Nicaraguan government "in the foreseeable future." Therefore, the next step the Administration is most likely to take, said "several officials," is to end diplomatic relations. Senator Richard Lugar, the chairman of the Senate Foreign Relations Committee, told the *Times* that he thought this would happen soon, and "then we might recognize a government in exile." As for how the war to install that government might begin, "American officials say they have not dropped the threat to destroy" any MIG jets that the Nicaraguans might get from the Soviet Union; in fact, "they have broadened it to include Czech-built L-39 jet training planes." The *Times* explained, "The idea is that American warplanes would destroy the new planes and try not to hit anything else. Then in theory the attack would end. But a senior Administration official said: 'I've never been able to see how that kind of phased operation stops because it sets off an action-reaction. If we hit the airport and maybe kill eighty or ninety people, they could come at the embassy.' " If they didn't come at the embassy, the official added, they might do something else to provoke an attack. "It is difficult to find anyone, friend or foe of the Nicaraguan government, who is confident the Sandinistas will not make a miscalculation that could lead to a military confrontation with the United States," the *Times* reported. "Many American military and diplomatic officials" have told their "superiors in Washington" that when a confrontation comes neighboring countries would welcome it. If the United States invaded Nicaragua, a Costa Rican official said, his government would issue a statement "saying something like 'it is unfortunate that the Cuban and Soviet advisers were invited in, and that the Sandinistas provoked it.' " An American intelligence officer who has interviewed dozens of people in Nicaragua and has been called upon to "brief numerous senior Administration offi-



cials on his views—including Mr. Weinberger, Mr. McFarlane, and Gen. John W. Vessey Jr., the Chairman of the Joint Chiefs of Staff" said, "What the people tell me is, 'we'd get out of your way and let you take care of the Sandinistas' " if the Americans landed. The biggest problem that United States forces would face, he added, would be preventing "severe retribution" against Sandinista officers.

Now that the invitations have gone out and the notice has appeared in the newspapers, it's probably too late to break off the engagement. Far be it from us to stand up in the back of the church and voice objections. But we do have a few questions. Real questions, not rhetorical ones. The answers to them are not, we think, obvious, and that is the point. What, exactly, is a Czech-built L-39 jet training plane? Have we as a nation finally decided the debate about our right to topple governments we don't like? Do we really dislike the Nicaraguan government so much more than, say, the government of Guatemala? (If so, what, exactly, does the phrase "human rights" refer to?) What about those eighty or ninety people who are going to be killed when we bomb the Czech L-39 jet trainers? What if a lot more people are killed—say, eight thousand, or maybe nine thousand? Once we have fallen off the log, what, exactly, are we thinking of doing in Nicaragua? That is, are we going to insure a democratic, non-repressive government? Or will we be satisfied as long as the government is anti-Communist? Are we completely convinced that the agent who did the man-in-the-street interviews was a good reporter, and that other Latin-American countries will welcome this invasion? What if some of them get angry and repudiate their debts to American banks? What about the difficulties in distinguishing between farmer and fighter which led to, say, the trouble at My Lai—have we figured out how to prevent them? Will our allies in the free world support us, and should we care? Maybe some Americans—college students and such—will get angry and alienated: how much damage will that do to our country? Is there any way, short of our removing its government, for us to live in peace with Nicaragua? How much money will all this cost, and are there better things to spend that money on? How much should we rely on experts and officials in this matter? Is there anyone else to rely on? Will falling off the log involve defoliating parts of Nicaragua, and, if so, will there be food shortages and the like? The ex-Somocistas in the Contra camps—what will their role be in the new Nicaragua? If the Russians are so deeply involved in Nicaragua, is there any danger that an American invasion of Nicaragua will escalate into something larger? Will an invasion hamper efforts to, say, reach arms-control agreements? Will the land that has been given to peasants under the Sandinistas be returned to its former owners? Will an invasion undercut international law? Is international law a useful idea? What, exactly, will we feel when we watch the bodies of soldiers being returned to the United States—will our determination waver or will it increase? Have we citizens of the United States collectively given this whole business as much study as any one of us would give, say, the purchase of a new car?

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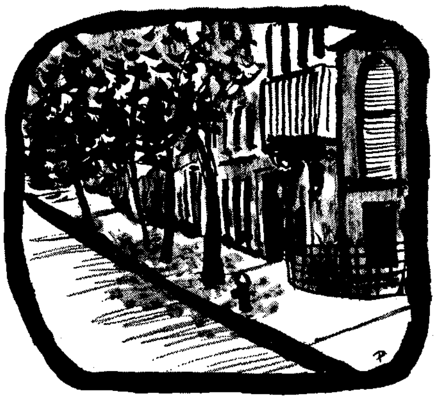
WHILE in Washington the next war was a "commonplace" topic of discussion, in the country at large people were still trying to come to terms with the last war—the one we fought in Vietnam. We don't mean the much discussed "lessons" of Vietnam—important as those are—but the sheer fact of the war itself: the fighting and the dying and the grieving. Remembrance has come hard. Only recently has the country been holding parades for the Vietnam veterans and building monuments to the war dead. One of these monuments is in New York, on Water Street, and we went down to visit it the other day.

It stands in a small park—Vietnam Veterans Plaza—lying between Water Street and the East River, where the river broadens out into New York Harbor. To the north and south, two office buildings tower over the park. The monument is a wall of glass brick with a stone pillar at each end and two doorways in the center. Engraved on the wall are quotations from letters written home by American soldiers and quotations from news stories and speeches of the Vietnam period. When we arrived—early on a hot, hazy day—a few other people were arriving, a few people were leaving, and a little wall of people, two and three deep, was standing facing the wall of the memorial, reading the letters and other inscriptions. Now and then, a handkerchief dabbed an eye. One letter said, "To see your buddy step on a VC antipersonnel mine is a hard thing to take but the real scare is when you go back to your base camp and see the smiling villagers all around you and then start to wonder if one of them set it there." In a letter inscribed over one of the doorways, a soldier told his family, "If I feel like talking about it, I will, but otherwise don't ask." Over the other doorway was this passage from a letter: "I often wonder if what we're fighting for is worth a human life." Inspired, perhaps, by the inscriptions on the wall, some veterans had penned messages of their own and attached them to the wall with tape. One, addressed to "MY FALLEN COMRADES," read, in part, "I remember you, too, gentle Sarge. I think of you, Robby, whenever I see an asphalt paver. You deserved better than to be in the path of an exploding claymore." It ended with the words "May a merciful God grant peace to you and comfort to your loved ones who survive, and may He help them to make some sense of your sacrifice."



In Washington, officials were poring over their maps, choosing targets, and planning the operational details of a war they believed might be as easy as falling off a log. In downtown New York, a wall of people was standing stock-still in front of a glass wall reading and reflecting, and mourning the victims of a war that had ended more than ten years before.

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Résumé

JANET came to the door and handed us a big paperback book titled "Aspen Institute Readings." "Are you hungry?" she asked.

We said yes.

"This is the stuff that I have to get through in the next two weeks," she said. "I was hoping you could help me bone up on 'The Brothers Karamazov.' I'm using a dictionary. Somebody asked me if I'd read 'The Brothers

Karamazov.' I thought maybe I had, but when I found out it was eight hundred pages long I realized I hadn't. I'm absolutely filled with trepidition."

"Trepidation," we said.

"Thanks. I haven't looked it up in the dictionary yet." Janet glanced at herself in a nearby mirror. "I have to get my hair cut, don't you think? And I'm going to wear glasses the whole time, to look intellectual."

We raised our eyebrows.

"You mean, I haven't told you about my phone call?"

We said no.

"I was sitting in my bedroom minding my own business," Janet said, "looking for a strange letter someone had sent me, when the phone rang, and a man's voice said, 'Is this Janet?' When I said yes, he said, 'We are offering you a fellowship to the Aspen Institute for Humanistic Studies.' I said, 'Who's we?' He said, 'I'm the head of the fellowship committee.' 'I believe you have the wrong Janet,' I said, 'because there are a lot of Janets in New York, including several who are psychiatrists.' He said, 'No, no. We're inviting you to come to the seminar.' I asked, 'What's the reason for it?' He said, 'That's a very good question.' "

Janet headed into the kitchen, and we followed.

"The morning session is the mind—I'll go into that later—and the afternoon is the body," Janet said. "In order to nourish both my mind and my body, I bought this today." She held up an orange box of cereal labelled "Sprouts 7." "Have I mentioned the planes I'm taking? I'm saving this man a lot of money by going to the seminar by way of L.A. I start off normal, with American Airlines, and then I take Frontier Airlines and then Rocky Mountain Airways, and when I leave Aspen I take the Lucky Mountain Airlines. If you're lucky, you arrive back in Denver at five-twenty-five." She put the box of seven-grain cereal in a cupboard. "I met a man who for five thousand dollars can make over this kitchen," she said.

We looked around.

"I was told that this is a seminar where you discuss Dostoyevski, Aristotle, and Sophocles," Janet went on. "I thought he said 'Socrates,' the hemlock guy, but it was Sophocles, as I realized when the books came. I asked the man, 'You mean I have to read something?' Then I said, 'I'll read it, but I won't understand it, and if I do I won't retain it.' 'You'll be perfect for this,' he said. 'I have a friend who reads all the time,' I said. He said, 'We want you.' I said, 'O.K., I'll do anything. What's it called?' "

We noticed a box of rice on the kitchen table.

"He said it was called the Aspen Institute for Corporate Executives," Janet continued. "I said, 'Corporate executives! I have nothing to wear. I might marry a corporate executive before they found out about me. Dostoyevski—he died, didn't he?' He didn't deign to answer that. 'O.K.,' I said. 'I'll come. When is it?' He said, 'I'll send you all the information, and you can send me your résumé.' 'Résumé? You didn't tell me I needed a résumé. I haven't got one. I was in the American Red Cross in the Second World War. I have two children and one divorce.' "

Janet opened the icebox and took out a pot of something frozen.

"I thought you could help me with my résumé," she said. "Are you hungry?"

We nodded.

"Every time I thought of something, I wrote it down," she said. "Red Cross, the Ash Grove in L.A., Orson Welles. I was very discouraged by my educational background. I know a brilliant guy in Albuquerque named Irwin who told me to tell the truth. 'The truth?' I said to him. He said, 'Well, make it up.' 'Make up the truth?' I said. He said, 'Why not?' " Janet added, "My whole life is coming before my eyes."

"Flashing," we suggested.

"Flashing. I once thought I knew the answer to everything. That was when I was under gas in the dentist's chair. I'm going to call up all the intelligent people I know and ask them for help."

Janet put the pot down near the stove. We followed her back into the living room.

"Since this came up, I've been trying to remember things," she said. "Here's what I remember: '*Il faut souffrir pour être belle*,' but I was wrong, it's '*d'être*'—I think. Schopenhauer didn't like women—nobody did in those days. 'Pigeons on the grass alas,' 'Two and two is four,' 'Every good cow deserves fun,' and 'All cows eat grass.' One of these books they sent me is 'The Visit,' by Dürrenmatt." She reached for the book. "Luckily, I saw Lynn Fontanne and Alfred Lunt in that play. I imagine the discussion is going to be Revenge versus Justice."

We sat up attentively.

"I don't want to discuss that now," Janet said. "I tried revenge once, and the guy got furious. I also remember being taught 'A word every day in the dictionary.' 'Acumen,' meaning 'keenness of perception.' I stopped at 'A.' I

"I envy you and Sean your counterpoint."

wasted my time reading the whole of 'Oedipus the King' before I found out we're only supposed to read 'Antigone.' I've read Plato and Sophocles, and already I've got them confused. 'Lycurgus' I hated, by Plutarch. I don't think it's well written, or else it loses everything in the translation. Then, there are these two Chinese guys who don't agree at all." She turned the pages of the big paperback. "Mencius and Hsün Tzŭ. I know we're going to have a hot discussion of that. One of them thinks that people are basically good, and the other thinks that human nature is evil. Then, there's a quote by Goethe at the beginning: 'The question to ask is not whether we are perfectly agreed, but whether we are proceeding from a common basis of sentiment.' " Janet was lost in thought for a moment or two.

"The first two days are spent on Justice, the Individual, and Society," she said when she had recovered. "Nine different selections for that. Mencius—that's the human-nature guy. The Old Testament—Genesis. New Testament—John. T. S. Eliot—'The Hollow Men.' 'The Hollow Men' is a poem. I forget what it means. Dostoyevski said that man lives not by bread alone." Janet looked down at the book. "It turns out he got that from the Bible. Then I read Freud, too. Wait a minute."

We waited.

"Let me get that word I underlined. I figured it out. It had to do with somebody." Janet put on her glasses and leafed through the book. " 'Noösphere,' " she said. "That's not it. Page fifty, I wrote 'Aha,' exclamation point. I wonder why. Did you know that Darwin didn't reject Lamarckian adaptationism? If he didn't, I won't. I think I'm through with the Greeks. 'Animism.' That isn't the word I wanted to tell you about. I haven't got to Machiavelli yet. It must be in 'Lycurgus.' He was telling about Sparta. They had a very rough time, those kids. He was very good and extremely bossy. It may have been the beginning of Communism. None of this is in my résumé, I'll tell you that. The hardest part is the commentaries about the authors before you even start reading them."

Janet kept leafing. "Marx and Engels. I'm going to learn a lot." She looked up. "An Englishman once complained that it was ridiculous for Marlon Brando to play Napoleon with an American accent. Just in case Napoleon comes up, I'm going to mention Marlon Brando. I'm all set with that. With the books they send you a letter telling you to underline things. Oh, where is that word? I underlined this: 'I agree as far as I am able to understand you.' I'm going to say that the entire time I'm there. Here's my *favorite* line: 'As Kao-Tzu said, "The appetite for food and sex is part of our nature." ' That's quoted by this good old Chinese guy who's my favorite person so far. Ah, here's one word—'ontogenic.' I haven't looked that up yet. I know there's another word. I can't find the word I underlined. Well, wait a minute." She took off her glasses. " 'The Republic'—I'm going to go through this once more and then we're going to eat."

We looked interested.

"This is very aggravating to me," she said. "I have a feeling these corporate executives aren't going to know much more than I do, because they've been too busy making money."

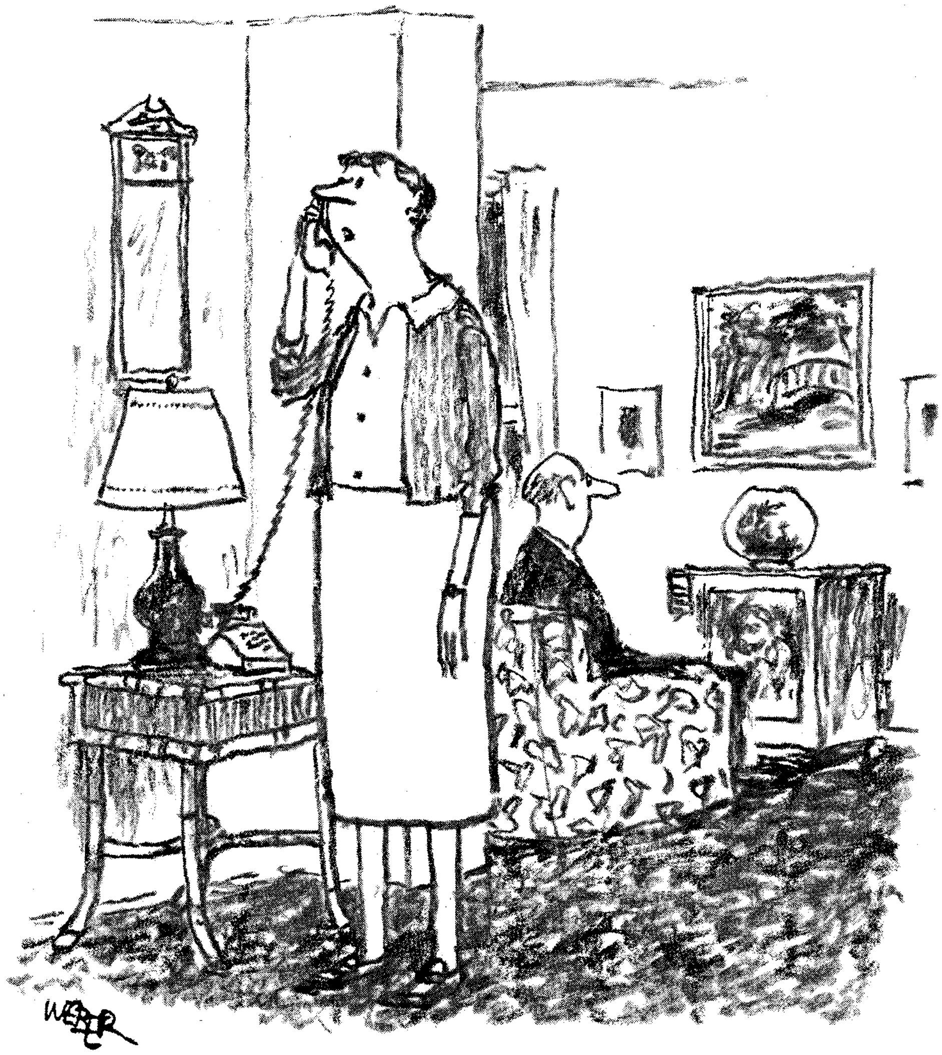
She studied the pages of the book. "Some word that they used, something about doing something to a priest. Where is it about this priest being pushed around? Oh my God, it might have been in Sophocles." Janet switched books. "Here it is, in the introduction to Sophocles: s-u-b-o-r-n-e-d. I figured it meant corrupted."

"Right," we said.

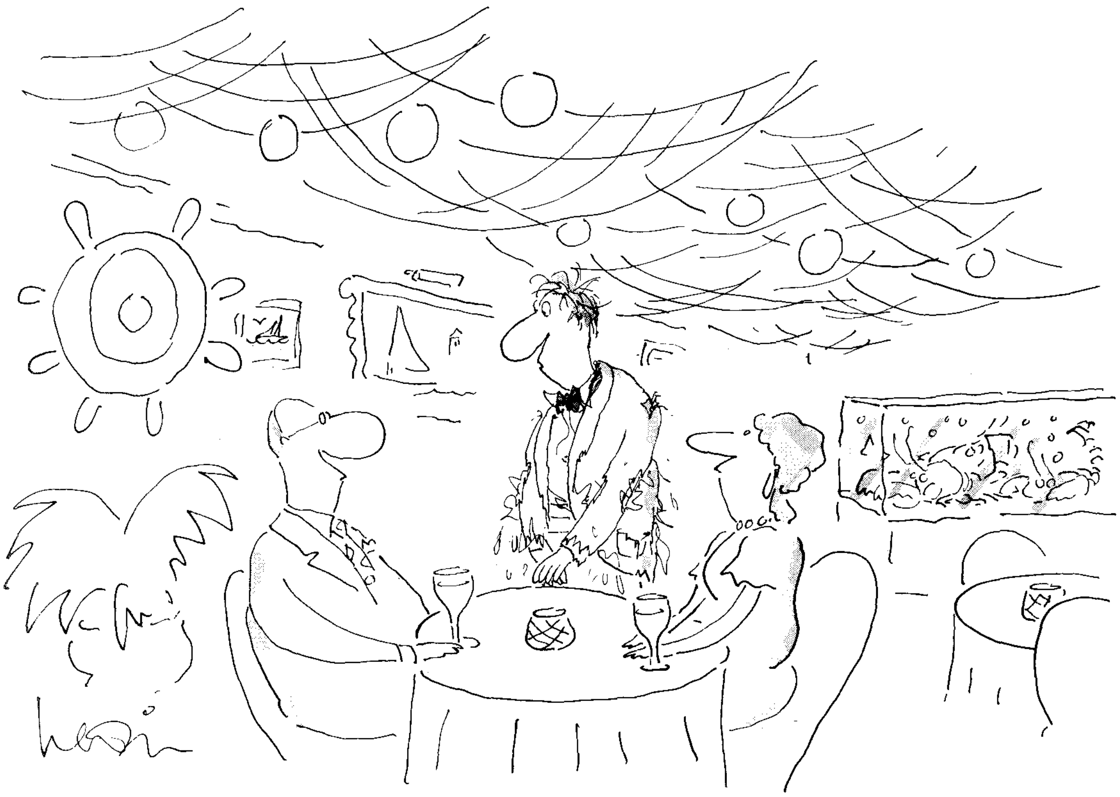
"That's what I figured," said Janet. "Now I'm going to fix dinner." She put the books down and picked up a batch of papers. "I wrote a résumé," she said, "and then realized that I forgot I was a writer at Twentieth Century-Fox." She handed us a folded piece of paper. "Here's a very strange letter I got."

We started to read. "Your account is now 45 days past due," it said.

"I was in the Red Cross as a program director," Janet said. "I was a movie star in Italy. I completely forgot that I wrote two movies once. All those jobs lasted about two weeks. I taught Arthur Murray how to rumba. I was in a revolution in Venezuela—I don't suppose that counts. I may have taught



"We've tuned in someone called Dr. Ruth, but we don't know what to make of it."



“I hate to inconvenience you, sir, but would you kindly pick a different lobster from the tank?”

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something once—can you think what that was?”

We put the letter down and tried to think.

“Oh, I was a stage manager on Broadway, and I’ve been running this orchestra for fourteen years.” She handed us another item from her collection of papers.

“Dear Janet,” we read. “I trust you have filed your return for the period ending December 31, 1982.”

“Unless I break a leg in the afternoon,” Janet was saying when we looked up. “Mind in the morning, body in the afternoon. Although I’m thinking of reversing it. If there’s a question-and-answer period, I don’t know which side I’d rather be on. I plan to take copious notes. The Jehovah’s Witnesses knocked on my door again the other day. I invited them to come in. ‘You can have tea, you can have coffee, you can use the bathroom,’ I said, ‘but please don’t tell me the truth.’ ”

Janet wandered back into the kitchen. We followed.

“There’s a difference between a scholarship and a fellowship,” she said. “A scholarship sounds as if you’re going to learn something.” She opened a cupboard and spotted the new box of seven-grain cereal. “I like six of the grains and one of them I don’t like,” she said. She closed the cupboard and stuck a fork into the pot near the stove. “This is frozen,” she said.

We eyed the box of rice on the table.

“It may not be ready to eat.” She peered at the frozen stuff. “I’m sorry that guy found me. I’ve been a nervous wreck ever since. I have terrible dreams—more like nightmares, actually. Last night, I was on this ship that was going in the opposite direction from Aspen. I’m going away for three weeks and I’m not ready. I have no money, and my two bags don’t have the right name on them. Where’s that book?”

We followed Janet out of the kitchen.

“I ask people on the subway, ‘Have you ever heard of Antigone?’ For a person who has total non-recall, this is going to be a very hard assignment.” She picked up one of the books. “Mao Tse-tung,” she said. “He wrote something called ‘To Reveal One’s True Feelings.’ That’s the last thing anyone wants to hear from you. I hope I make friends with a lot of these corporate giants and they look me up when I’m back in the city. My mind hurts already from all this. When I come back, nobody’ll know me, I’ll be so profound. On the sixth day of Week One, I’m going to whip through the Communist Manifesto.”

Janet leaned over and picked up a piece of paper from the floor. “Did you see this?” she asked. “It’s a certificate of recognition from Tip O’Neill. I’m going to frame it. Afterward, I got a phone call from the Democratic Party asking for a thousand dollars. I said I could give twenty-five. An erudite cabdriver is coming over to help me on Friday. I’m cooking.”

We glanced in the direction of the kitchen.

Janet handed us the big book. “Here,” she said. “ ‘The Hollow Men,’ page eighty-five. Read it right now and tell me what you think it means.” She went into her bedroom and half closed the door. We heard water running in a bathtub.

“Between you and the cabdriver, maybe I’ll learn something,” she called out, “although it may be considered cheating to know what I’m talking about.”

We read:

> Those who have crossed
> With direct eyes, to death’s other
>   Kingdom.

“You know, your brain is a muscle,” Janet’s voice said, accompanied by sounds of splashing. “And mine is atrophied. Oh, my brain may be all right—it’s the mind that’s atrophied, not the brain. Well, one of them is.”

We pondered some lines from the poem:

> And voices are
> In the wind’s singing
> More distant and more solemn
> Than a fading star.

Janet’s voice grew fainter. “So I said, ‘I don’t know anything.’ ‘You don’t have to know anything,’ he said. I started school in the third grade, because my mother didn’t want me to get germs.”

We stood up and fixed ourself a drink. The stuff in the pot seemed to be thawing out slightly.

SETTLING AN OLD SCORE

"There are some experiences which should not be demanded twice from any man," [George Bernard Shaw] remarked, "and one of them is listening to Brahms's Requiem." And, in his most famous dismissal of the work, he referred to it as "patiently borne only by the corpse." . . . There are no rights and wrongs in criticism, only opinions more or less in conformance with the consensus of enlightened observers over time. By that criterion Shaw was "wrong." But . . . musical polemics fade far faster than music itself, thankfully.—*John Rockwell in the Times.*

TO anyone who has tried to sit down and just enjoy a composition by Johannes Brahms, the sensation is all too familiar. As the musical phrases begin to wash away the cares of the day, transporting one into a delightful never-never land of artistic transcendence, one's brain is rudely skewered by George Bernard Shaw's unforgettable dictum about Brahms: "Like listening to paint dry." Once Shaw penned this zinger, it became impossible (even for an independent-minded music critic like myself) to relax and surrender to the simple pleasure of knowing that Brahms is no longer considered passé. And another thing: each time a Brahms piece is ruined by an ineradicable nagging memory of that effortless Shavian one-liner, the annoyance is nothing compared to what Brahms must feel, squirming eternally in his grave, his reputation forever etched by the acid of Shaw's scorn.

Brahms was but one victim of Shaw's many pinpricks in the hot-air balloons of his era's cultural biases. Yet a host of the myriad names he lambasted have nonetheless survived. Yet so has a lingering respect for Shaw. In the mind of today's critic, this poses a problem. Must we say that Shaw was "wrong"? We may be tempted to utter a definitive "Yes," while on the other hand bearing in mind that critical truth is an ever-shifting flux of historically relative pros and cons. Shaw's derision of all the things he had scorn for has stood the test of time—because what he said has remained a touchstone, memorized and quoted again and again by generations of critics willing to encounter such a mind at the height of its powers even though we may possibly disagree, living as we do in a differing cultural context.

By way of qualification, however, I should point out that Shaw was not merely a negative hatchet man. For example, take his blistering assertion that "Brahms makes the lowest hack jingle-writer look like Mozart." Even someone such as myself who unashamedly rather likes Brahms (when well performed) is forced to concede Shaw's positive foresight in defending the populist craft of the jingle-writer. (Not that this means I must obsequiously agree with every single last nuance of Shaw's statement.)

In any case, Shaw's poison-tipped barbs were aimed at such a multitude of targets that to say he missed once or twice would be to say very little at all. Whatever the topic, Shaw never left any doubt as to where he stood:

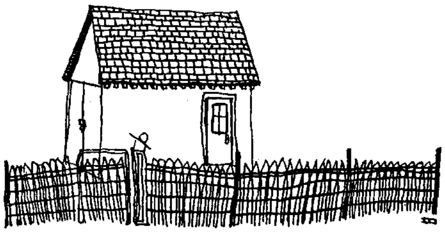
On "Hamlet": "A tour de fuss."

On Oscar Wilde: "A man out of touch with his funnybone."

On the Code of Hammurabi: "The sort of thing that would be considered profound by girls named Misty."

On the formation of a local committee in Brighton to study the feasibility of allowing tourists to transport their beach gear on special storage racks affixed to the sides of buses: "A worse idea hasn't crossed this battered old desk of mine in lo, these many moons."

From 1914 to 1919, Shaw's razor-tongued gibes were overshadowed by a vogue for bright quips about World War I. By 1921, however, he was again riding high—thanks to a series of personal appearances billed as "Shaw and His Skunk of the Week." Playing to packed houses that rocked with expectant hilarity when he led off with one of his typical catchphrases—"Am I hot under the collar tonight!" or "Here's something that really steams my butt"—he administered verbal shellackings to contemporary follies and pretensions ranging from "Peter Pan" ("It has plot holes you could drive a truck through") to the scientific community's renewed interest in Isaac Newton's idea of putting a cannonball into orbit ("One of those notions worth thinking about while you clean your teeth: a tour de floss").



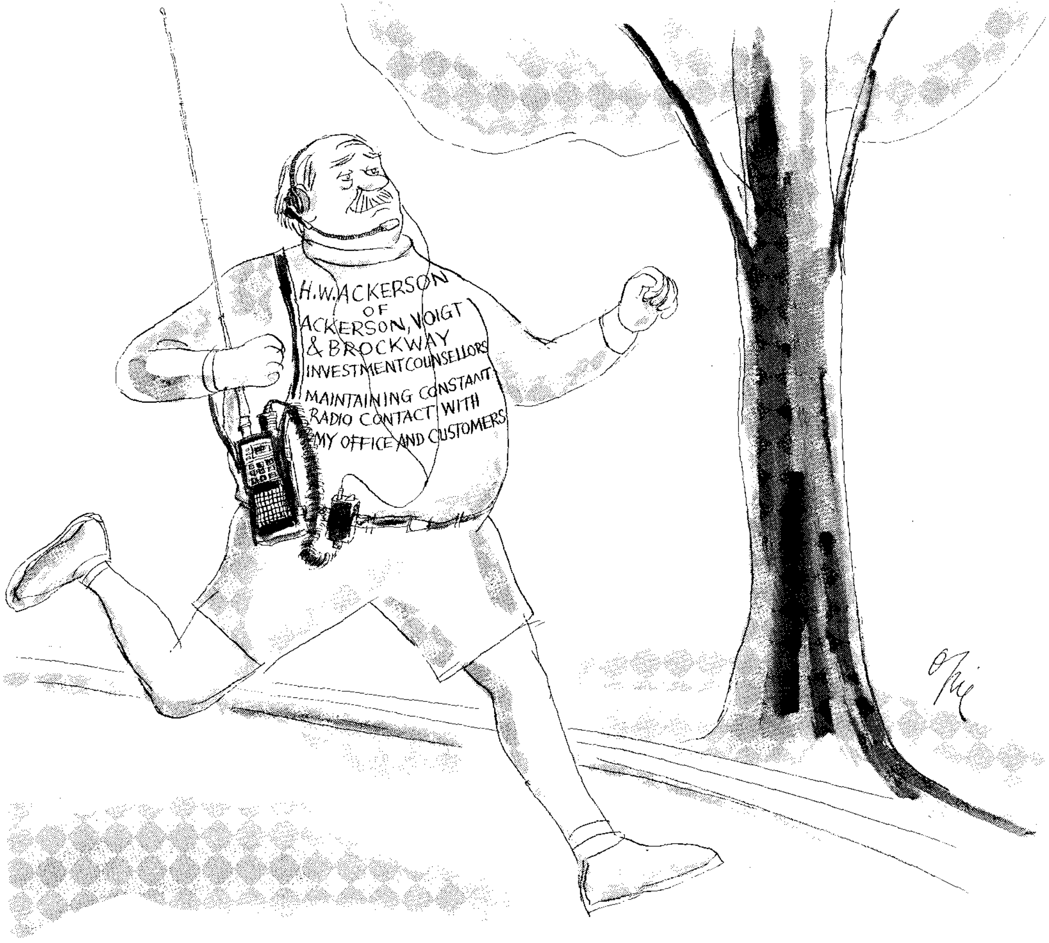
For the next twenty years, nothing and no one seemed safe from Shaw's merciless stabs—not even his fans. Abhorring the nuisance of uninvited visitors, he posted on his door the following notice:

RULES FOR VISITORS

1. If you don't see what you want, don't be too shy to ask. Probably we don't have it anyway.
2. If the service is not up to snuff, just holler. Nobody will pay you any mind, but your tonsils can use the exercise.
3. We will gladly cash your check if you leave your watch, fur coat, or car as collateral. No wives or in-laws accepted.
4. If you are displeased in any way by the attentions of the resident Doberman pinscher, just remember—things could be worse. You could be at a Brahms concert.

But his visitors, instead of feeling rebuffed, copied out the notice and awarded it pride of place in their dens. Thus, a truism became widely established once and for all (until recently): that the name of Johannes Brahms was a joke (even to people who had never heard a note of his music), and that George Bernard Shaw was an unimpeachable debunker of sacred cows. Indeed, by 1940 so secure was Shaw's reputation that there was only one person in the entire English-speaking world capable of cutting him down to size.

LYNDON BAINES JOHNSON was a young congressman from Texas when, in July, 1940, Shaw came through the state on a lecture tour of the U.S. At the Houston airport, Johnson headed the delegation of local celebrities assigned to greet the distinguished visitor from abroad, who was to address a luncheon at the Houston Junior League Tea Room and then spend the night as Johnson's guest at his ranch (which probably he wasn't rich enough to own yet, but it could have been a summer rental). Waiting on the tarmac, Johnson took a minute to riffle through the press release he had been given on Shaw, and remarked, "This son of a bitch has got some kind of mean mouth on him." So Johnson was really up for a confrontation. Whereas Shaw was too busy hating Brahms to be bothered thinking about a junior U.S. congressman whom he hadn't even heard of yet. As soon as they met, Johnson immediately established dominance by a tactic he later became famous for—his "laying on of hands." The spindly, white-bearded Irishman, who didn't like being mauled by strangers, tried to counterattack by snapping at the big Texan in boots and Stetson,



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"What is this—some kind of tour de horse?" But it came out sounding pretty feeble. Nobody laughed, and Shaw lost crucial momentum. Johnson sensed right away that he had the edge, and he kept it. He was just a master of humiliation. On the way to the Junior League Tea Room, he asked Shaw to get him his dress boots out of a gym bag that he had purposely put on Shaw's side of the seat. At that point, Shaw overthought the situation and drew a bad conclusion. He decided to just go along with everything Johnson did and cater to him, on the theory that Johnson would quit bothering him once he saw he couldn't get a rise out of him. This was a huge mistake. The more quiet and docile Shaw got, the more Johnson tortured him.

At the luncheon, Johnson pretended not to be able to hear anything Shaw said, so Shaw had to repeat himself in a louder voice and came off as strident. The whole time, Johnson sat with his body angled subtly away from him, as if they weren't really together. During the lecture, he had a phone brought to the table and called his answering service. Then there was a question period, so Johnson asked Shaw his opinion of a book, "Pratfall Into the Abyss," which didn't exist. When Shaw said he had never heard of it, Johnson said, "What's the matter—you too dumb to recognize a joke when you hear one?," but he said it in a funny way that would have made Shaw look oversensitive if he got mad.

Then—here's another thing Johnson did. At the end of the luncheon, they were supposed to go right to the ranch, but Johnson dawdled a lot, which drove Shaw totally nuts. Finally, after a two-hundred-mile ride in a bouncing pickup truck, which Johnson drove himself—fiddling with the radio the whole time and refusing to talk, because they were alone, and if Shaw complained to anybody later he could never prove it—they got to the ranch, where the vegetarian Shaw was confronted with the sight and aroma of grotesque sides of beef barbecuing over smoking mesquite in earth trenches sodden with fat drippings. (Johnson hadn't even known that Shaw was a vegetarian—it was just a lucky break that fed into his strategy.)

The final blow was that night, when Johnson made Shaw dress up in an oversize cowboy suit with woolly chaps and showed him off like a performing monkey to a crowd of oil barons. The most galling part of it for Shaw was that by this time he had forfeited his right to protest. If he said anything now, Johnson could come back with "Well, why the hell didn't you speak up sooner?" or accuse him of being passive-aggressive. Anyway, so much of it was the kind of stuff Shaw couldn't exactly put his finger on.

Shaw's wounds were still raw the next morning when he woke up in an uncomfortable bed made out of a wagon wheel and saw hanging on a wall the following notice, framed in mesquite:

RULES FOR VISITORS

1. Never cross L.B.J.
2. Obey all rules.

Shaw later claimed that he escaped by walking a hundred and ten miles, in sandals, to a private landing strip outside Waco, where he bummed a flight to L.A. But Johnson always told reporters that while he remembered Shaw's lecture, Shaw had spent the night in Houston at a friend's who was out of town, and never set foot on the ranch. He knew this would get back to Shaw and make him feel psychologically annihilated.

In 1950, when Shaw died, his last words were "Don't tell L.B.J. I don't want to give him the satisfaction." Every year since their meeting, Johnson had bugged Shaw by sending him a Christmas card with the printed message "Thank you for your support." Johnson enjoyed this joke so much that no one had the heart to tell him when Shaw died. Every Christmas, he personally signed the card, and his secretary pretended to mail it. Although he suffered some reverses late in his own life, this annual power play lightened his spirits until the very end. He rests in peace, unlike Brahms.

—VERONICA GENG

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MARKET RESEARCH—Projects needs Participants. Qualified respondent confiscated in cash.—*Adv. in the Orlando (Fla.) Sentinel.*

Taking a leaf from the I.R.S.?

JUMP OR DIVE

Jason, my uncle's lover, sat in the dark kitchen eating what sounded like a bowl of cereal. He had some disease that made him hungry every few hours—something about not enough sugar in his blood. Every night, he got up at about three o'clock and fixed himself a snack. Since I was sleeping on the living-room couch, I could hear him.

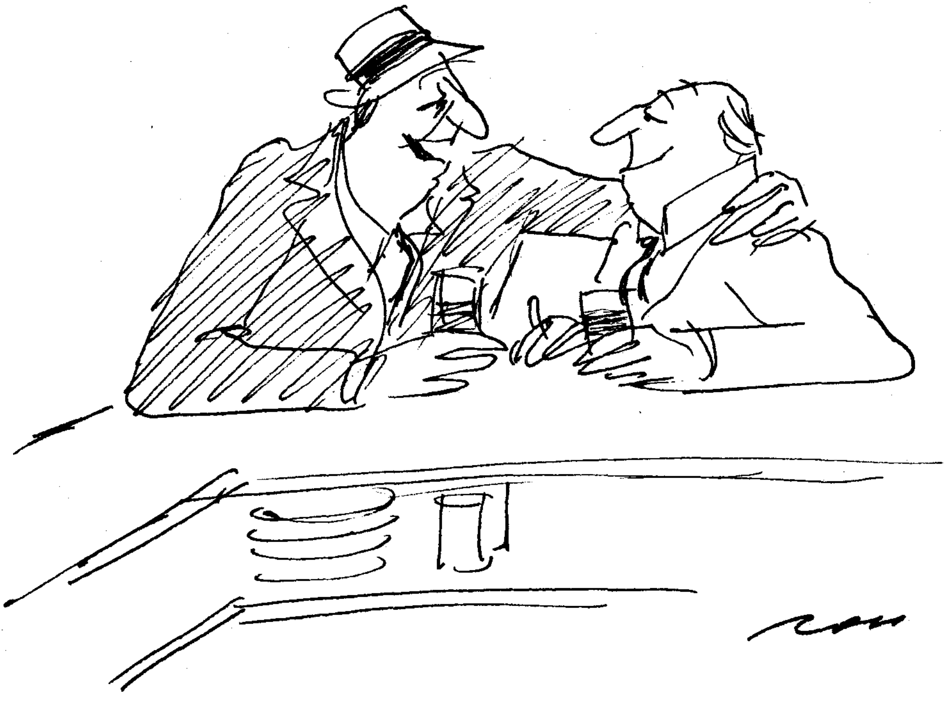
My parents and I had driven down from Oregon to visit my Uncle Walter, who lived in Arizona. He was my father's younger brother. My sister Jackie got to stay home, on account of having just graduated from high school and having a job at the Lob-Steer Restaurant. But there was no way my parents were letting me stay home: I had just finished ninth grade and I was unemployed.

My parents slept in the guest room. Jason and Uncle Walter slept together in the master bedroom. The first morning, when I went into the bathroom, I saw Jason sitting on the edge of the big unmade bed in his jockey shorts. Jason was very tan, but it was an odd tan: his face and the bottom three-quarters of his arms were much darker than his chest. It looked as if he was wearing a T-shirt.

The living-room couch was made of leather and had little metal nubs stuck all over it. It was almost impossible to sleep on. I lay there listening to Jason crunch. The only other noise was the air-conditioner, which turned itself off and on constantly to maintain the same, ideal temperature. When it went off, you could hear the insects outside. A small square of light from the opened refrigerator appeared on the dining-room wall. Jason was putting the milk away. The faucet ran for a second, and then Jason walked through the living room, his white underwear bright against his body. I pretended I was asleep.

After a while, the air-conditioner went off, but I didn't hear the insects. At some point in the night—the point that seems closer to morning than to evening—they stopped their drone, as though they were unionized and paid to sing only so long. The house was very quiet. In the master bedroom, I could hear bodies moving, and murmuring, but I couldn't tell if it was people making love or turning over and over, trying to get comfortable. It went on for a few minutes, and then it stopped.

We were staying at Uncle Walter's for a week, and every hour of every day was planned. We always had a morning activity and an afternoon activity. Then we had cocktail hour, then dinner, then some card game. Usually hearts, with the teams switching: some nights Jason and Walter versus my parents, some nights the brothers challenging Jason and my mother. I never played. I watched TV, or rode Jason's moped around the deserted roads of Gretna Green, which was the name of Uncle Walter's condominium village. The houses in Gretna Green were called villas, and they all had different names—some for gems, some for colors, and some for animals. Uncle Walter and Jason lived in Villa Indigo.



"You can fool all the people some of the time, and some of the people all the time, but you can't lead a horse to water and make him drink. Right?"

We started each morning on the patio, where we'd eat breakfast and "plan the day." The adults took a long time planning the day so there would be less day to spend. All the other villa inhabitants ate breakfast on their patios, too. The patios were separated by lawn and rock gardens and pine trees, but there wasn't much privacy: everyone could see everyone else sitting under uniformly striped umbrellas, but everyone pretended he couldn't. They were mostly old people, retired people. Children were allowed only as guests. Everyone looked at me as if I was a freak.

Wednesday morning, Uncle Walter was inside making coffee in the new coffee machine my parents had brought him. My mother told me that whenever you're invited to someone's house overnight you should bring something—a hostess gift. Or a host gift, she added. She was helping Uncle Walter make breakfast. Jason was lying on a chaise in the sun, trying to even out his tan. My father was reading the *Wall Street Journal*. He got up early every morning and drove into town and bought it, so he could "stay in touch." My mother made him throw it away right after he read it so it wouldn't interfere with the rest of the day.

Jason had his eyes closed, but he was talking. He was listing the things we could do that day. I was sitting on the edge of a big planter filled with pachysandra and broken statuary that Leonard, my uncle's ex-boyfriend, had dug up somewhere. Leonard was an archeologist. He used to teach paleontology at Northern Arizona University, but he didn't get tenure, so he took a job with an oil company in South America, making sure the engineers didn't drill in sacred spots. The day before, I'd seen a tiny, purple-throated lizard in the vines, and I was trying to find him again. I wanted to catch him and take him back to Oregon.

Jason paused in his list, and my father said, "Uh-huh." That's what he always says when he's reading the newspaper and you talk to him.

"We could go to the dinosaur museum," Jason said.

"What's that?" I said.

Jason sat up and looked at me. That was the first thing I'd said to him, I think. I'd been ignoring him.

"Well, I've never been there," he said. Even though it was early in the morning, his brown forehead was already beaded with sweat. "It has some reconstructed dinosaurs and footprints and stuff."

"Let's go there," I said. "I like dinosaurs."

"Uh-huh," said my father.

My mother came through the sliding glass doors carrying a platter of scrambled eggs. Uncle Walter followed with the coffee.

"We're going to go to the dinosaur museum this morning," Jason said.

"Please, not that pit," Uncle Walter said.

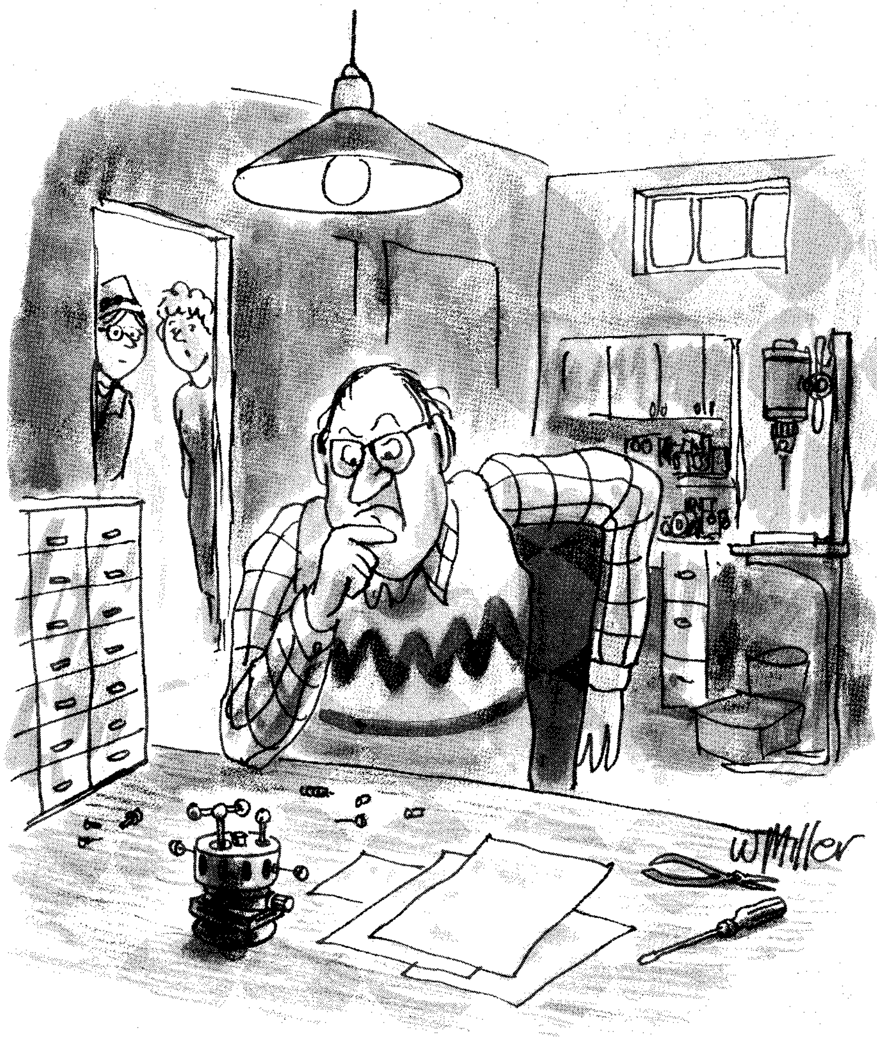
"But Evan wants to go," Jason said. "It's about time we did something he liked."

Everyone looked at me. "It doesn't matter," I said.

"Oh, no," Uncle Walter said. "Actually, it's fascinating. It just brings back bad memories."

As it turned out, Uncle Walter and my father stayed home to discuss their finances. My grandmother had left them her money jointly, and they're always arguing about how to invest it. Jason drove my mother and me out to the dinosaur museum. I think my mother came just because she didn't want to leave me alone with Jason. She doesn't trust Uncle Walter's friends, but she doesn't let on. My father thinks it's very important we all treat Uncle Walter normally. Once he hit Jackie because she called Uncle Walter a fag. That's the only time he's ever hit either of us.

The dinosaur museum looked like an airplane hangar in the middle of the desert. Inside, trenches were dug into the earth and bones stuck out of their walls. They were still exhuming some of the skeletons. The sand felt oddly damp. My mother took off her sandals and carried them; Jason looked around quickly, and then went outside and sat on the hood of the car, smoking, with his shirt off. At the gift stand, I bought a small bag of dinosaur bone chips. My mother bought a 3-D panoramic postcard. When you held it one way, a dinosaur stood with a creature in its toothy mouth. When you tilted it, the creature disappeared. Swallowed.



"Poor Homer. He was hoping the aerospace industry might be interested, but so far the only feelers have been from Toys 'Я' Us."

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ON the way home, we stopped at a Safeway to do some grocery shopping. Both Jason and my mother seemed reluctant to push the shopping cart, so I did. In the produce aisle, Jason picked up cantaloupes and shook them next to his ear. A few feet away, my mother folded back the husks to get a good look at the kernels on the corncobs. It seemed as if everyone was pawing at the food. It made me nervous, because once, when I was little, I opened up a box of chocolate Ding Dongs in the grocery store and started eating one, and the manager came over and yelled at me. The only good thing about that was that my mother was forced to buy the Ding Dongs, but every time I ate one I felt sick.

A man in Bermuda shorts and a yellow cardigan sweater started talking to Jason. My mother returned with six apparently decent ears of corn. She dumped them into the cart. "Who's that?" she asked me, meaning the man Jason was talking to.

"I don't know," I said. The man made a practice golf swing, right there in the produce aisle. Jason watched him. Jason was a golf pro at a country club. He used to be part of the golf tour you see on television on weekend afternoons, but he quit. Now he gave lessons at the country club. Uncle Walter had been one of his pupils. That's how they met.

"It's hard to tell," Jason was saying. "I'd try opening up your stance a little more." He put a cantaloupe in our shopping cart.

"Hi," the man said to us.

"Mr. Baird, I'd like you to meet my wife, Ann," Jason said.

Mr. Baird shook my mother's hand. "How come we never see you down the club?"

"Oh . . ." my mother said.

"Ann hates golf," Jason said.

"And how 'bout you?" The man looked at me. "Do you like golf?"

"Sure," I said.

"Well, we'll have to get you out on the links. Can you beat your dad?"

"Not yet," I said.

"It won't be long," Mr. Baird said. He patted Jason on the shoulder. "Nice to see you, Jason. Nice to meet you, Mrs. Jerome."

He walked down the aisle and disappeared into the bakery section. My mother and I both looked at Jason. Even though it was cold in the produce aisle, he was sweating. No one said anything for a few seconds. Then my mother said, "Evan, why don't you go find some Doritos? And some Gatorade, too, if you want."

Back at Villa Indigo, my father and Uncle Walter were playing cribbage. Jason kissed Uncle Walter on the top of his semi-bald head. My father watched and then stood up and kissed my mother. I didn't kiss anyone.

THURSDAY, my mother and I went into Flagstaff to buy new school clothes. Back in Portland, when we go into malls we separate and make plans to meet at a specified time and place, but this was different: it was a strange mall, and since it was school clothes, my mother would pay for them, and therefore she could help pick them out. So we shopped together, which we hadn't done in a while. It was awkward. She pulled things off the rack which I had ignored, and when I started looking at the Right Now for Young Men stuff she entered the Traditional Shoppe. We finally bought some underwear, and some orange and yellow socks, which my mother said were "fun."

Then we went to the shoe store. I hate trying on shoes. I wish the salespeople would just give you the box and let you try them on yourself. There's something about someone else doing it all—especially touching your feet—that embarrasses me. It's as if the person was your servant or something. And in this case the salesperson was a girl about my age, and I could tell she thought I was weird, shopping with my mother. My mother sat in the chair beside me, her pocketbook in her lap. She was wearing sneakers with little bunny-rabbit tails sticking out the back from her socks.

"Stand up," the girl said.

I stood up.

"How do they feel?" my mother asked.

"O.K.," I said.

"Walk around," my mother commanded.

I walked up the aisle, feeling everyone watching me. Then I walked back and sat down. I bent over and unlaced the shoes.

"So what do you think?" my mother asked.

The girl stood there, picking her nails. "They look very nice," she said.

I just wanted to get out of there. "I like them," I said. We bought the shoes.

On the way home, we pulled into a gas station–bar in the desert. "I can't face Villa Indigo without a drink," my mother said.

"What do you mean?" I asked.

"Nothing," she said. "Are you having a good time?"

"Now?"

"No. On this trip. At Uncle Walter's."

"I guess so," I said.

STARLING

Heard its drumming first downstairs:
no dream at all, a large bird loose
inside the room—an open flue.
It clatters, swoops the tilting house,
and clears the lamps and loops somehow
to sanctuary, green—the turret
of the window bay a terror-
struck and echoing vitrine, whose
wilderness of hanging plants
swings sickeningly, wing-slammed, sley
on twisting thread, and plain-weave sash
struck hard, and birdlime everywhere;
it whites the map where he'll not land,
a veer of lost flight back and forth
from light to light—I duck, a scare-
crow, duck again, and back away;
his beak, his breast, his wingbeats snare
across the glass like castanets
until I think the gimballed earth
itself begins to sway—

And I, too, down the chimney straight
into the ancient, uncast net
of nightmare: tonight, again, The Punctured
Greenhouse, where, high and frail, a spun-
glass arboretum starts to vibrate,
touched, high up; a shard of chert,
tic, enters slowly like a small
star drill, drifts down, transects the humid
chamber so, to kiss a far wall,
tic, exploding outward in a plume
of glass—and hear, an insect hum
inside the ear, the conch shell sounding
at the drum, where scimitars
of falling plate whir down and scythe
the dark and cooling space inside
the room, its delicate cloud forest
first laid bare, exposed for the first
time to the airless dark, to the steep
and penetrating light of stars,
where every green goes sepia,
goes brown, and consciousness whorls down
no lullaby, no dream, to sleep.

—RICHARD KENNEY

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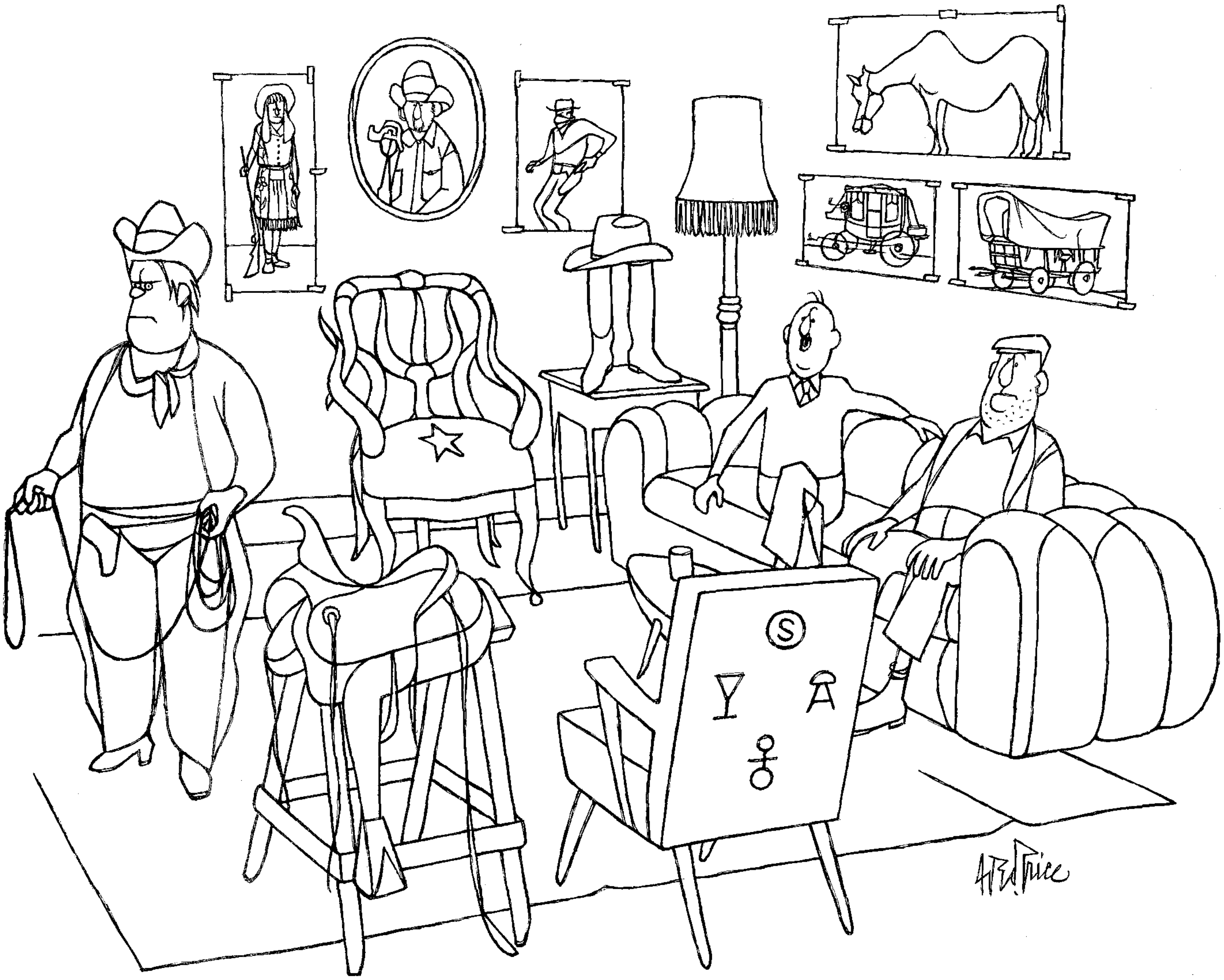

"Lily Mae's a blue-eyed daughter of the Lone Star State, aren't you, hon?"

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"Do you like Jason?"

"Better than Leonard."

"Leonard was strange," my mother said. "I never warmed to Leonard."

We got out of the car and walked into the bar. It was dark inside, and empty. A fat woman sat behind the bar, making something out of papier-mâché. It looked like one of those statues of the Virgin Mary people have in their front yards. "Hiya," she said. "What can I get you?"

My mother asked for a beer and I asked for some cranberry juice. They didn't have any, so I ordered a Coke. The woman got my mother's beer from a portable cooler like the ones you take to football games. It seemed very unprofessional. Then she sprayed Coke into a glass with one of those showerhead things. My mother and I sat at a table in the sun, but it wasn't hot, it was cold. Above us, the air-conditioner dripped.

My mother drank her beer from the long-necked green bottle. "What do you think your sister's doing right now?" she asked.

"What time is it?"

"Four."

"Probably getting ready to go to work. Taking a shower."

My mother nodded. "Maybe we'll call her tonight."

I laughed, because my mother called her every night. She would always make Jackie explain all the noises in the background. "It sounds like a party to me," she kept repeating.

My Coke was flat. It tasted weird, too. I watched the woman at the bar. She was poking at her statue with a swizzlestick—putting in eyes, I thought.

"How would you like to go see the Petrified Forest?" my mother asked.

"We're going to another national park?" On the way to Uncle Walter's, we had stopped at the Grand Canyon and taken a mule ride down to the river. Halfway down, my mother got hysterical, fell off her mule, and wouldn't get back on. A helicopter had to fly into the canyon and rescue her. It was horrible to see her like that.

"This one's perfectly flat," she said. "And no mules."

"When?" I said.

"We'd go down on Saturday and come back to Walter's on Monday. And leave for home Tuesday."

The bar woman brought us a second round of drinks. We had not asked for them. My Coke glass was still full. My mother drained her beer bottle and looked at the new one. "Oh dear," she said. "I guess we look like we need it."

THE next night, at six-thirty, as my parents left for their special anniversary dinner in Flagstaff, the automatic lawn sprinklers went on. They were activated every evening. Jason explained that if the lawns were watered during the day the beads of moisture would magnify the sun's rays and burn the grass. My parents walked through the whirling water, got in their car, and drove away.

Jason and Uncle Walter were making dinner for me—steaks, on their new electric barbecue. I think they thought steak was a good, masculine food. Instead of charcoal, their grill had little lava rocks on the bottom. They reminded me of my dinosaur bone chips.

The steaks came in packs of two, so Uncle Walter was cooking up four. The fourth steak worried me. Who was it for? Would we split it? Was someone else coming to dinner?

"You're being awfully quiet," Uncle Walter said. For a minute, I hoped he was talking to the steaks—they weren't sizzling—so I didn't answer.

Then Uncle Walter looked over at me. "Cat got your tongue?" he asked.

"What cat?" I said.

"The cat," he said. "The proverbial cat. The big cat in the sky."

"No," I said.

"Then talk to me."

"I don't talk on demand," I said.

Uncle Walter smiled down at his steaks, lightly piercing them with his chef's fork. "Are you a freshman?" he asked.

"Well, a sophomore now," I said.

"How do you like being a sophomore?"

My lizard appeared from beneath a crimson leaf and clicked his eyes in all directions, checking out the evening.

"It's not something you like or dislike," I said. "It's something you are."

"Ah," Uncle Walter said. "So you're a fatalist?"

I didn't answer. I slowly reached out my hand toward the lizard, even though I was too far away to touch it. He clicked his eyes toward me but didn't move. I think he recognized me. My arm looked white and disembodied in the evening light.

Jason slid open the terrace doors, and the music from the stereo was suddenly loud. The lizard darted back under the foliage.

"I need a prep chef," Jason said. "Get in here, Evan."

I followed Jason into the kitchen. On the table was a wooden board, and on that was a tomato, an avocado, and an apple. Jason handed me a knife. "Chop those up," he said.

I picked up the avocado. "Should I peel this?" I asked. "Or what?"

Jason took the avocado and sliced it in half. One half held the pit and the other half held nothing. Then he pulled the warty skin off in two curved pieces and handed the naked globes back to me. "Now chop it."

I started chopping the stuff. Jason took three baked potatoes out of the oven. I could tell they were hot by the way he tossed them onto the counter. He made slits in them and forked the white stuffing into a bowl.

"What are you doing?" I asked.

"Making baked potatoes," he said. He sliced butter into the bowl.

"But why are you taking the potato out of the skin?"

"Because these are stuffed potatoes. You take the potato out and doctor it up and then put it back in. Do you like cheese?"

"Yes," I said.

"Do you like chives?"

"I don't know," I said. "I've never had them."

"You've never had chives?"

"My mother makes normal food," I said. "She leaves the potato in the skin."

"That figures," Jason said.

After dinner, we went to the driving range. Jason bought two large buckets and we followed him upstairs to the second level. I sat on a bench and watched Jason and my uncle hit ball after ball out into the floodlit night. Sometimes the balls arched up into the darkness, then reappeared as they fell.

Uncle Walter wasn't too good. A few times, he topped the ball and it dribbled over the edge and fell on the grass right below us. When that happened, he looked around to see who noticed, and winked at me.

"Do you want to hit some?" he asked me, offering his club.

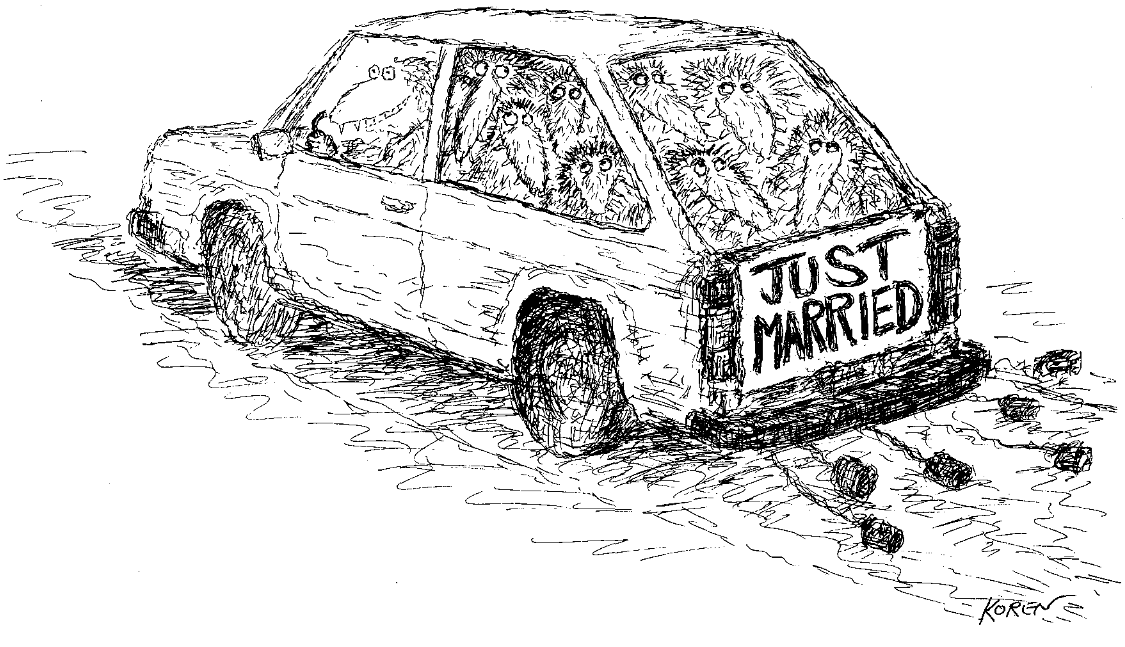
"Sure," I said. I was on the golf team last fall, but this spring I played baseball. I think golf is an élitist sport. Baseball is more democratic.

I teed up a ball and took a practice swing, because my father, who taught me to play golf, told me always to take a practice swing. Always. My first shot was pretty good. It didn't go too far, but it went straight out and bounced a ways before I lost track of it in the shadows. I hit another.

Jason, who was in the next cubicle, put down his club and watched me. "You have a great natural swing," he said.

His attention bothered me, and I almost missed my next ball. It rolled off the tee. I picked it up and re-teed it.

"Wait," Jason said. He walked over and stood behind me. "You're swinging much too hard." He leaned over me so that he was embracing me from behind, his large tan hands on top of



mine, holding the club. "Now, just relax," he said, his voice right beside my cheek.

I tried to relax, but I couldn't. I suddenly felt very hot.

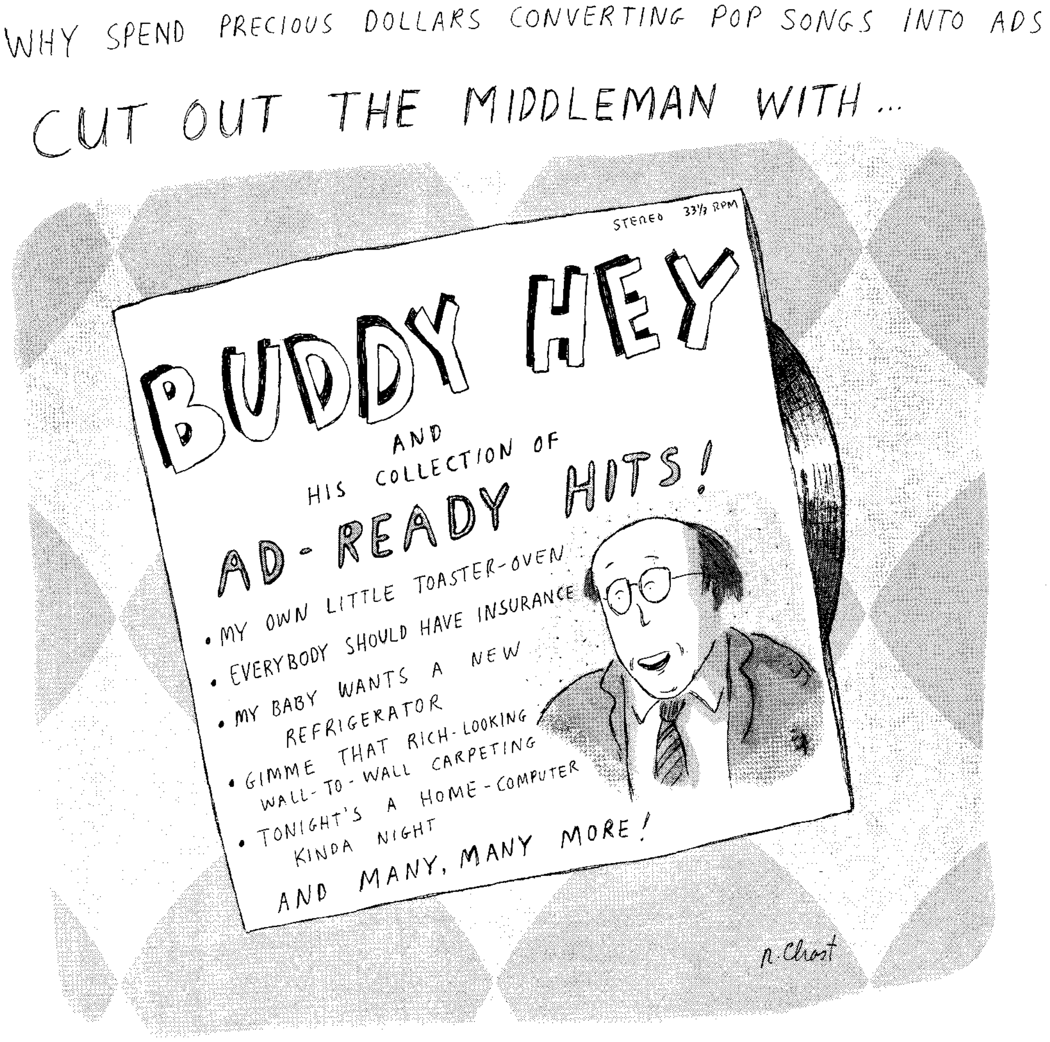
"O.K.," Jason said, "nice and easy. Keep the left arm straight." He raised his arms, and with them the club. Then we swung through, and he held the club still in the air, pointed out into the night. He let go of the club and ran his hand along my left arm, from my wrist up to my shoulder. "Straight," he said. "Keep it nice and straight." Then he stepped back and told me to try another swing by myself.

I did.

"Looking good," Jason said.

"Why don't you finish the bucket?" my uncle said. "I'm going down to get a beer."

Jason returned to his stall and resumed his practice. I teed up another ball, hit it, then another, and another, till I'd established a rhythm, whacking ball after ball, and all around me clubs were cutting the night, filling the sky with tiny white meteorites.


WHY SPEND PRECIOUS DOLLARS CONVERTING POP SONGS INTO ADS?
CUT OUT THE MIDDLEMAN WITH...
STEREO 33⅓ RPM
BUDDY HEY
AND HIS COLLECTION OF
AD-READY HITS!
• MY OWN LITTLE TOASTER-OVEN
• EVERYBODY SHOULD HAVE INSURANCE
• MY BABY WANTS A NEW REFRIGERATOR
• GIMME THAT RICH-LOOKING WALL-TO-WALL CARPETING
• TONIGHT'S A HOME-COMPUTER KINDA NIGHT
AND MANY, MANY MORE!
R. Chast

BACK at Villa Indigo, the sprinklers had stopped, but the insects were making their strange noise in the trees. Jason and I went for a swim while my uncle watched TV. Jason wore a bathing suit like the swimmers in the Olympics: red-white-and-blue, and shaped like underwear. We walked out the terrace doors and across the wet lawn toward the pool, which was deserted and glowed bright blue. Jason dived in and swam some laps. I practiced diving off the board into the deep end, timing my dives so they wouldn't interfere with him. After about ten laps, he started treading water in the deep end and looked up at me. I was bouncing on the diving board.

"Want to play a game?" he said.

"What?"

Jason swam to the side and pulled himself out of the pool. "Jump or Dive," he said. "We'll play for money."

"How do you play?"

"Don't you know anything?" Jason said. "What do you do in Ohio?"

"It's Oregon," I said. "Not much."

"I can believe it. This is a very simple game. One person jumps off the diving board—jumps high—and when he's at the very highest the other person yells either 'Jump' or 'Dive,' and the person has to dive if the other person yells 'Dive' and jump if he yells 'Jump.' If you do the wrong thing, you owe the guy a quarter. O.K.?"

"O.K.," I said. "You go first."

I stepped off the diving board and Jason climbed on. "The higher you jump, the more time you have to twist," he said.

"Go," I said. "I'm ready."

Jason took three steps and sprang, and I yelled, "Dive." He did.

He got out of the pool, grinning. "O.K.," he said. "Your turn."

I sprang off the board and heard Jason yell, "Jump," but I was already falling forward head first. I tried to twist backward, but it was still a dive.

"You owe me a quarter," Jason said when I surfaced. He was standing on the diving board, bouncing. I swam to the side. "Here I go," he said.

I waited till he was coming straight down toward the water, feet first, before I yelled, "Dive," but somehow Jason somersaulted forward and dived into the pool.

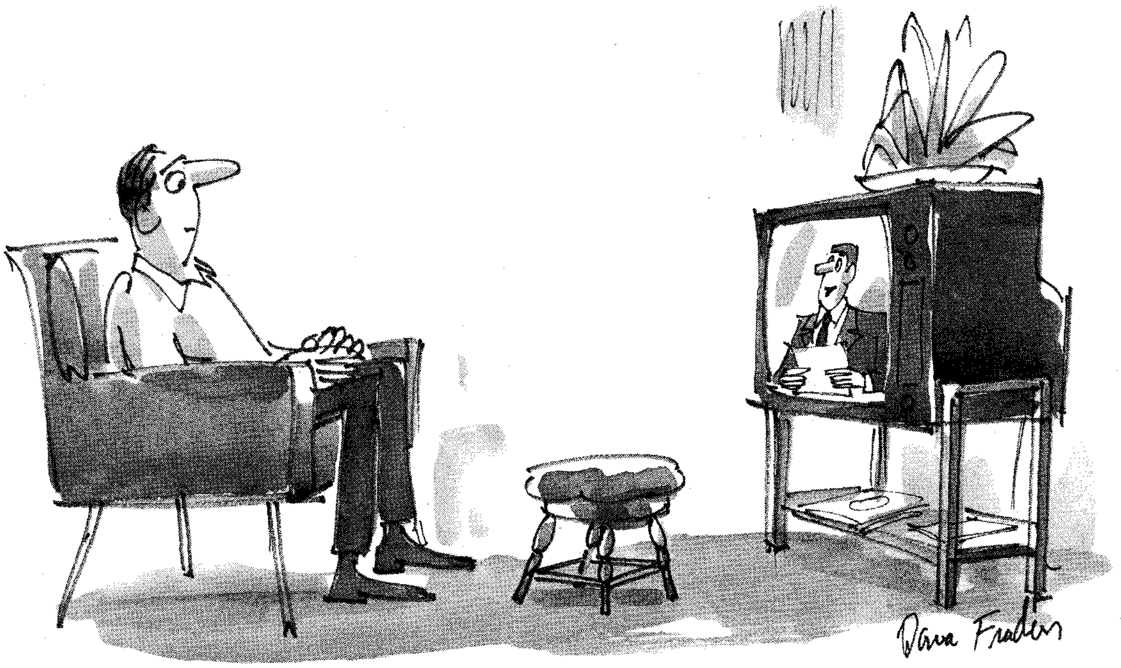
We played for about fifteen minutes, until I owed Jason two dollars and twenty-five cents and my body was covered with red welts from smacking the water at bad angles. Suddenly the lights in the pool went off.

"It must be ten o'clock," Jason said. "Time for the geriatrics to go to bed."

The black water looked cold and scary. I got out and sat in a chair. We hadn't brought towels with us, and I shivered. Jason stayed in the pool.

"It's warmer in the water," he said.

I didn't say anything. With the



"This is the nightly news, with Jim Watson in New York sitting in for Walt Bolling, who is on vacation, and Herb Henry in Washington sitting in for Stu Farnell, who is too liberal."

• •

lights off in the pool, the stars appeared brighter in the sky. I leaned my head back and looked up at them.

Something landed with a splat on the concrete beside me. It was Jason's bathing suit. I could hear him in the pool. He was swimming slowly underwater, coming up for a breath and then disappearing again. I knew that at some point he'd get out of the water and be naked, so I walked across the lawn toward Villa Indigo. Inside, I could see Uncle Walter lying on the couch, watching TV.

LATER that night, I woke up hearing noises in the kitchen. I assumed it was Jason, but then I heard talking, and realized it was my parents, back from their anniversary dinner.

I got up off the couch and went into the kitchen. My mother was leaning against the counter, drinking a glass of seltzer. My father was sitting on one of the barstools, smoking a cigarette. He put it out when I came in. He's not supposed to smoke anymore. We made a deal in our family last year involving his quitting: my mother would lose fifteen pounds, my sister would take Science Honors (and pass), and I was supposed to brush Princess Leia, our dog, every day without having to be told.

"Our little baby," my mother said. "Did we wake you up?"

"Yes," I said.

"This is the first one I've had in months," my father said. "Honest. I just found it lying here."

"I told him he could smoke it," my mother said. "As a special anniversary treat."

"How was dinner?" I asked.

"O.K.," my mother said. "The restaurant didn't turn around, though. It was broken."

"That's funny," my father said. "I could have sworn it was revolving."

"You were just drunk," my mother said.

"Oh, no," my father said. "It was the stars in my eyes." He leaned forward and kissed my mother.

She finished her seltzer, rinsed the glass, and put it in the sink. "I'm going to bed," she said. "Good night."

My father and I both said good night, and my mother walked down the hall. My father picked up his cigarette. "It wasn't even very good," he said. He looked at it, then held it under his nose and smelled it. "I think it was stale. Just my luck."

I took the cigarette butt out of his hands and threw it away. When I turned around, he was standing by the terrace doors, looking out at the dark trees. It was windy.

"Have you made up your mind?" he asked.

"About what?"

"The trip."

"What trip?"

My father turned away from the terrace. "Didn't Mom tell you? Uncle Walter said you could stay here while Mom and I went down to see the Petrified Forest. If you want to. You can come with us otherwise."

"Oh," I said.

"I think Uncle Walter would like it if he had some time alone with you. I don't think he feels very close to you anymore. And he feels bad Jackie didn't come."

"Oh," I said. "I don't know."

"Is it because of Jason?"

"No," I said.

"Because I'd understand if it was."

"No," I said, "it's not that. I like Jason. I just don't know if I want to stay here. . . ."

"Well, it's no big deal. Just two days." My father reached up and turned off the light. It was a dual overhead light and fan, and the fan spun around some in the darkness, each spin slower. My father put his hands on my shoulders and half pushed, half guided me back to the couch. "It's late," he said. "See you tomorrow."

I lay on the couch. I couldn't fall asleep, because I knew that in a while Jason would be up for his snack. That kept me awake, and the decision about what to do. For some reason, it did seem like a big deal: going or staying. I could still picture my mother, backed up against the wall of the Grand Canyon, as far from the cliff as possible, crying, her mule braying, the helicopter whirring in the sky above us. It seemed like a choice between that and Jason swimming in the dark water, slowly and nakedly. I didn't want to be there for either.

The thing was, after I sprang off the diving board I did hear Jason shout, but my brain didn't make any sense of it. I could just feel myself hanging there, above the horrible bright-blue water, but I couldn't make my body turn, even though I was dropping dangerously, and much too fast.

—PETER CAMERON

ANNALS OF LAW

THE ASBESTOS INDUSTRY ON TRIAL

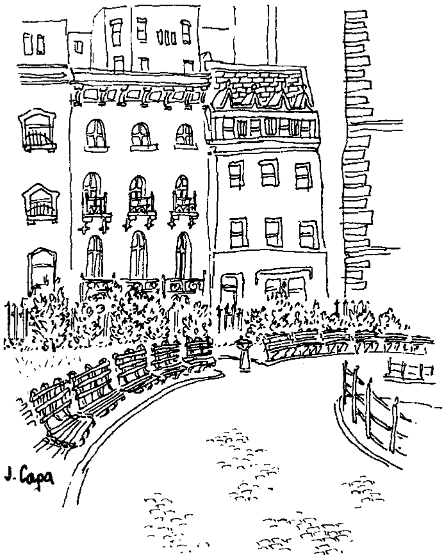
II—DISCOVERY

THE Fifth Circuit Court of Appeals' 1973 landmark decision upholding the trial court's verdict in Clarence Borel v. Fibreboard Paper Products Corporation et al.—the first product-liability lawsuit involving asbestos insulation in which the plaintiff won a jury verdict—triggered the greatest avalanche of toxic-tort litigation in the history of American jurisprudence. Some twenty-five thousand lawsuits were brought over the next decade as word spread that asbestos manufacturers could be held strictly liable under the law. The landmark opinion was written by Judge John Minor Wisdom, who pointed out that Section 402A of the "Restatement of the Law of Torts"—a comprehensive redefinition of tort law that had been published in 1965—required a manufacturer to disclose the existence and the extent of reasonably foreseeable risk involved in the use of his product, and went on to declare that "an insulation worker, no less than any other product user, has a right to decide whether to expose himself to the risk."

Judge Wisdom rejected the manufacturers' claim that it was up to insulation contractors to warn their employees about the hazards of asbestos; a seller, he said, could be liable to the ultimate consumer or user for failure to give adequate warnings. As for the defendants' claim that evidence was lacking to support the jury's finding that each of them was the cause of injury to Borel, Judge Wisdom said that it was impossible to determine with absolute certainty which particular exposure to asbestos resulted in injury to Borel but that it was indisputable that Borel had contracted asbestosis from inhaling asbestos dust, and that he had been exposed to the products of all the defendants on many occasions. According to Judge Wisdom, this was strong circumstantial evidence that each defendant was the cause of some injury to Borel. He concluded his opinion with this paragraph:

> In reaching our decision in the case at bar, we recognize that the question of the applicability of Section 402A of the Restatement to cases involving "occupational diseases" is one of first impression. But though the application is novel, the underlying principle is ancient. Under the law of torts, a person has long been liable for the foreseeable harm caused by his own negligence. This principle applies to the manufacture of products as it does to almost every other area of human endeavor. It implies a duty to warn of foreseeable dangers associated with those products. This duty to warn extends to all users and consumers, including the common worker in the shop or in the field. Where the law has imposed a duty, courts stand ready in proper cases to enforce the rights so created. Here, there was a duty to speak, but the defendants remained silent. The district court's judgment does no more than hold the defendants liable for the foreseeable consequences of their own inaction.

As things turned out, it took several years for the implications of Borel to be fully appreciated by the trial lawyers of the nation, and for asbestos insulators, shipyard workers, and their families to learn that their health might have been seriously jeopardized by exposure to asbestos dust. If Ward Stephenson, the Texas attorney who won the Borel case, had lived, the whole process would undoubtedly have been accelerated. Stephenson had made strenuous efforts to alert his colleagues in the legal profession to the plight of asbestos workers, and he would have known how to capitalize on the Borel trial and its pleadings, which provided a detailed blueprint for dismantling the widespread coverup conspiracy that had been perpetrated by the asbestos industry and its paid consultants for nearly half a century. The plaintiff lawyers who now took up asbestos litigation not only were deprived of his dozen years of experience but often failed to grasp the tantalizing clues that he had uncovered in Borel, and thus lost an opportunity to shorten the arduous years of discovery that lay ahead.

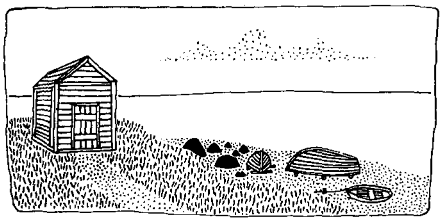


An exception was Stephenson's law partner, Marlin Thompson, who first became involved in asbestos litigation during Ward's final illness, when he tried and won a workmen's-compensation lawsuit in a Texas state court. Thompson, who was forty-six when Stephenson died, was born in the town of Lufkin, Texas, and grew up on a farm near Cleveland, about eighty miles west of Orange, Texas. He graduated from the University of Texas School of Law in 1952, and in 1953 he moved to Orange and started work at Stephenson & Stephenson. At the time of Stephenson's death, he knew very little about asbestos litigation, and felt, he has said, as if the roof had caved in on him.

"There I was with a dozen product-liability asbestos lawsuits on my hands and almost no idea about how to proceed with them," he recalls. "What I did was study Borel and play catch-up as best I could. In January of 1974, I settled three cases, including that of Jesse J. Crawford, who had testified for both Claude Tomplait and Borel, and from then on new clients came pouring in as more and more asbestos insulators from Asbestos Workers Local 22 in Houston got sick.

"The first strict-liability case I tried was for Bill Condray, a job foreman, who had testified for Borel. Condray was sixty-seven years old when he came to us, in 1975. He had worked with asbestos for more than forty years, and in 1975 he found that he had developed asbestosis. During 1976, he developed lung cancer, which spread to the bone marrow in one elbow, and by the time his case came to trial, early in March of 1977, he was dying in a Houston hospital. The thing I'll never forget about Condray is how angry he was. He had been in the hospital about six weeks, and everyone had expected him to die long before the trial got under way, but he swore that he wasn't going to die until he heard the jury verdict. Another thing that made the case memorable was that Dr. Daniel Jenkins, who had been Ward Stephenson's chief expert witness against the state-of-the-art defense in Borel, which was predicated on the assertion that until Dr. Irving Selikoff, of the Mount Sinai School of Medicine, published his 1964 study of the mortality rate among insulation workers no one at the company could possibly have foreseen that asbestos-insulation products might pose a health hazard, and who had diagnosed Ward's lung cancer and attended him while he was at Methodist Hospital, decided to testify for the asbestos-insulation manufacturers. In fact, under direct examination by a defense attorney, Jenkins proceeded to contradict the main points he had made in the deposition that Ward had taken from him back in August of 1970. I countered by reading him selected portions of that deposition, including his statement that by 1940 there was adequate medical and scientific knowledge to put a manufacturer of asbestos products on notice about the danger of these products. The jury went out at 4 P.M. on a Thursday, and when they came back, two hours later, they returned a verdict for Condray and awarded him seventy-five thousand dollars in damages. I called him right away and told him the news, and it was as if he had hung on just long enough to hear it, because he died a day and a half later. As for Jenkins, he continued to testify for the asbestos-insulation manufacturers over the next few years, but after my cross-examination got disseminated and he got blown out a few times they stopped using him and found someone else."

THE Fifth Circuit Court decision affirming the trial court's judgment in Borel was an ominous harbinger for the manufacturers of asbestos insulation, but because juries in East Texas—particularly in the labor-union stronghold of the heavily industrialized area known as the Golden Triangle—had always tended to be sympathetic toward plaintiffs and working people Johns-Manville, the nation's largest asbestos manufacturer, refused to accept Borel as the final word in determining its liability in other jurisdictions. A year and a half later, it appealed a second adverse jury decision in a strict-liability action involving asbestos insulation, in the hope of obtaining an appeals-court reversal that would counteract Borel. The case in question was brought by a sixty-year-old insulator from Duluth, Minnesota, named John A. Karjala, who learned in 1966 that he had developed asbestosis. Three years later, Karjala retained an attorney after reading a letter in the *Asbestos Worker*, a union publication, written by Ward Stephenson to the president of the International Association of Heat and Frost Insulators and Asbestos Workers, in Washington, D.C., informing him of the out-of-court settlements in Claude Tomplait's lawsuit and asking him to alert the membership of his union to the implications of the case. Karjala's lawyer, Paul J. Louisell, wrote to Stephenson, who sent him a copy of the complaint in Borel v. Fibreboard, and in February of 1971 Karjala filed a product-liability lawsuit in the United States District Court for the District of Minnesota against the same manufacturers who had been defendants in Borel. During 1972 and 1973, all the defendants except Johns-Manville either settled out of court or were dismissed from the case. When the case went to trial, in September of 1974, the company again claimed that until the 1964 report of Dr. Selikoff and his colleagues it could not have foreseen the danger to insulators who used its asbestos products. After evidence was



THE BORROWED ONES

We, the old children, are now old again
with a new authority. We take
their young hands in ours
and tell them we will stay old, swear
to grow even older, be rust
to their iron. Whose are these
rain barrels in the pasture that fill and over-
fill with softest rain? I knock them aside
and the ground drinks, in its gradual way,
all they give.

We were the motherless, or those who say "Mother"
as "help me," and whatever comes—that sky
with one orange bird, even a wave
that endures moonlight—even these
will do. Finally we did
for ourselves. In our loving we mothered
the men we wanted to be more than. And
though our breasts were still the breasts of
children, we gave ourselves as children
give, with the door wide open, with
the house on fire. Still, our hands were
mothers' hands, were lament and pledge,
a whirl of bells through the sweet gloom of
their foraging, and, yes, something, something was
satisfied.

If at our table those who would have loved us
ate the meal, forgetting to light
the candles, we smiled on them
with the kindness of conquered stars—not
the brightest ones, but those
expendable ones
that fall to gain a share
in the splendor.

Now, if I call you "Daughter," it is not
out of obedience
you will step toward me
but as the ghost of one who bore you,
gazing out—I, who have given you
a daughter's arms.

—Tess Gallagher

• •

presented to show that Johns-Manville had had early knowledge of the health hazards of asbestos, the jury returned a verdict in favor of Karjala, who would die of malignant mesothelioma—an always fatal tumor that is closely associated with exposure to asbestos—the following summer, and awarded him two hundred thousand dollars.

In April of 1975, Johns-Manville appealed the verdict to the Eighth Circuit Court of Appeals, in St. Louis, claiming that Judge Miles W. Lord, who had presided over the trial, had misstated the law when he instructed the jury on strict liability, and also that Karjala's action should be barred by the Minnesota statute of limitations. In September, the Eighth Circuit upheld Lord on the matter of strict liability and affirmed the trial court's judgment on the question of the statute. Thus, in the space of three years Johns-Manville had appealed and lost two strict-liability cases involving asbestos-insulation products in two separate federal jurisdictions. The consequences proved disastrous for the company and its colleagues in the asbestos industry, as well as for their insurance carriers, because the Borel and Karjala cases were written up in the *Federal Reporter* and circulated to law libraries and lawyers across the nation.

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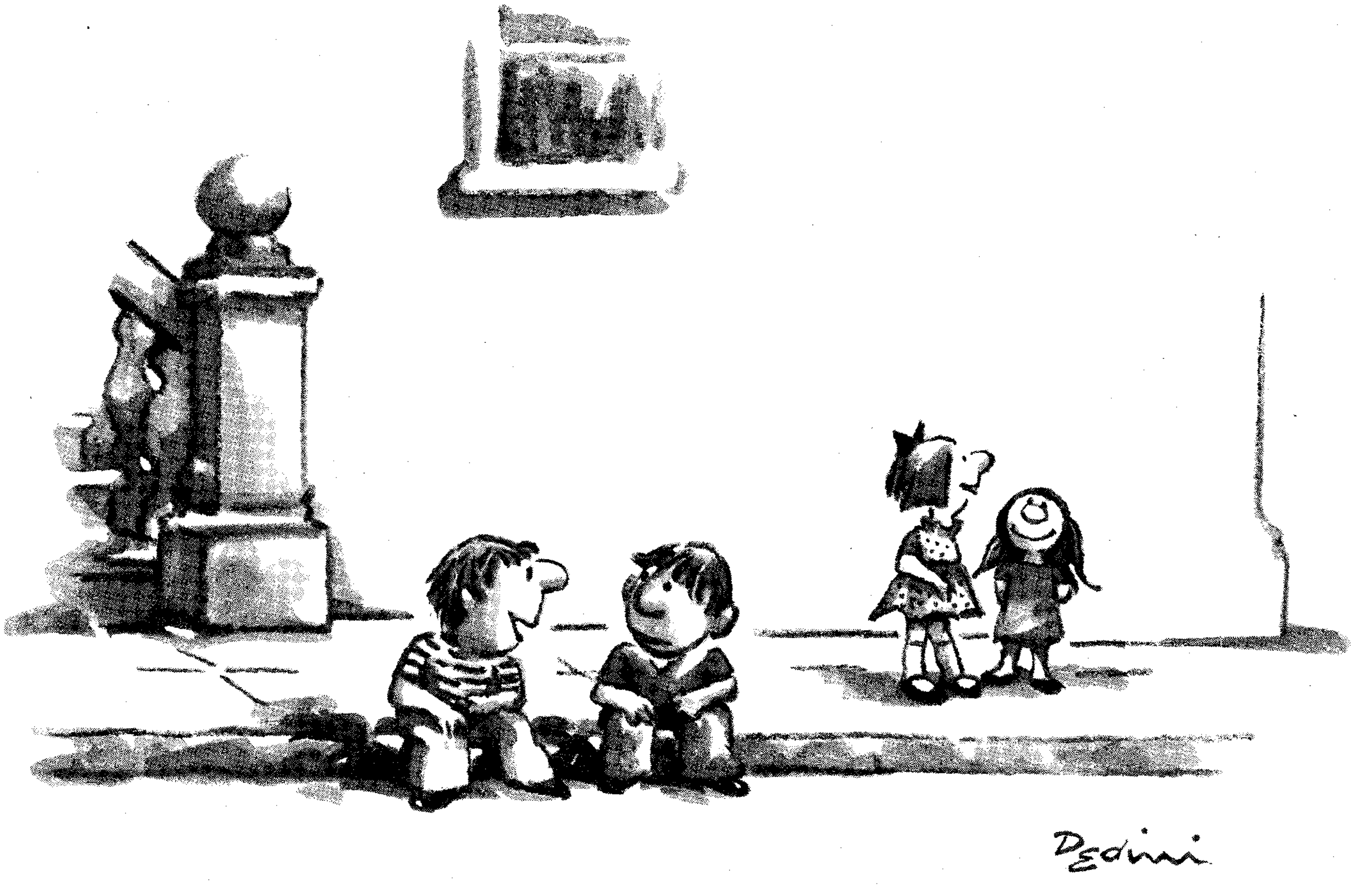
MRS. RITTERHOUSE CAPTAIN
BOOTH

• •

THE bitterest and most costly lesson of all, of course, was the grim reckoning that was taking place with regard to the health experience of the seventeen thousand eight hundred men who were members of the International Association of Heat and Frost Insulators and Asbestos Workers. Dr. Selikoff and his colleagues at Mount Sinai had continued to observe the cause of death among an original group of six hundred and thirty-two asbestos insulators they were studying, and by 1976 a broad picture of the asbestos-disease toll among them had become tragically clear. Nineteen per cent of them were dying of lung cancer; nine per cent were dying of gastro-intestinal cancer; eight per cent were succumbing to mesothelioma; and nine per cent were being killed by asbestosis and other noninfectious lung diseases. The fact that more than one in three of them were dying of cancer led to the inescapable conclusion that there was an epidemic of malignancy among these men.

Meanwhile, during the nineteen-sixties and early nineteen-seventies, Selikoff had been keeping close watch over seventeen patients from a UNARCO insulation factory in Paterson, New Jersey, which had been shut in November of 1954. By 1973, only two of these men were alive. Of the fifteen who had died, seven were victims of lung cancer, two of cancer of the stomach, four of asbestosis, and one of mesothelioma. (The other death was caused by heart disease.) In 1968, Dr. Selikoff and his colleagues began to trace the nine hundred and thirty-three men who had worked at the factory at some point between 1941 and 1945 and thus, if they were still alive, had passed the twenty-year mark since their initial exposure to asbestos dust. By the end of 1976, it was apparent that they had uncovered a tragedy similar to the one that had befallen the asbestos-insulation workers, for the rate of lung cancer among the former UNARCO factory workers was seven times the expected rate.

When UNARCO shut the Paterson factory, it had opened a similar plant in Tyler, Texas, which was awarded a large contract by the Navy to provide amosite-asbestos pipe covering for nuclear submarines, but in 1962 UNARCO's managers decided to quit the asbestos business altogether. They sold the Tyler plant to the Pittsburgh Corning Corporation—a joint venture



"The way I see it, the eighties are the warmup for the nineties."

• •

of the Pittsburgh Plate Glass Company (now called PPG Industries) and the Corning Glass Works. By the summer of 1963, the new owners were apparently entertaining some misgivings about working conditions in the factory, for at that time they asked the Industrial Hygiene Foundation of America to evaluate the asbestos-dust hazard there. The foundation's industrial-hygiene engineers misinterpreted the threshold limit for asbestos dust, however, and instead of informing Pittsburgh Corning that the asbestos-fibre content of the total amount of airborne dust they had measured in the Tyler plant ranged from a low of twenty-nine per cent to a high of fifty-six per cent, and that this constituted an appalling health hazard, they merely made recommendations for better housekeeping and better ventilation equipment.

Three years later, conditions were even worse. By that time, the company had acquired as its medical consultant Dr. Lee B. Grant, a retired colonel, who had been chief of aerospace medicine for the United States Air Force Logistics Command, and had become the medical director of one of Pittsburgh Corning's parent corporations, the Pittsburgh Plate Glass Company, in 1964. At Dr. Grant's request, a survey of the Tyler plant was conducted in November of 1966, but the engineer from Pittsburgh Plate Glass who performed it also misinterpreted the recommended standard for asbestos dust, and although he suggested that better ventilation equipment be installed, he did not report that workers at the factory were breathing concentrations of asbestos fibres ten times as high as the standard that was supposed to protect them from disease.

In March of 1967, an environmental survey of the Tyler plant, which consisted in taking eighty-two samples of air in the factory, was conducted by engineers sent there by Dr. Lewis J. Cralley, who was associate program chief for field studies and epidemiology in the Public Health Service's Division of Occupational Health, in Cincinnati. More than a year passed before Cralley's people got around to informing Pittsburgh Corning that the asbestos-fibre counts were considered high in more than half of the samples, but their report did not mention that a health hazard might exist at the Tyler plant. Nor did it advise J. W. McMillan, the works manager of the factory, to improve the ventilation system or to institute better housekeeping practices. Nevertheless, McMillan did not remain in the dark about the situation for very long, because on April 3, 1968, Dr. Grant wrote him a letter telling him that the dust levels measured by Cralley's group constituted "a significant health hazard," and saying, "You must anticipate that both some cases of asbestosis and an increased incidence of pulmonary carcinoma will develop in your employee population as a result of continued exposure to these levels for 15 or more years."

At this time, the Occupational Health people had no legal authority to enter and inspect factories, and were operating under a pledge of confidentiality that precluded any possibility that the data they collected in their surveys would be made known to the workers whose health was being affected or to the unions representing them. This quiet state of affairs was fine with the asbestos industry. On the one hand, the industry could state publicly that, with its assistance, the United States Public Health Service was investigat-

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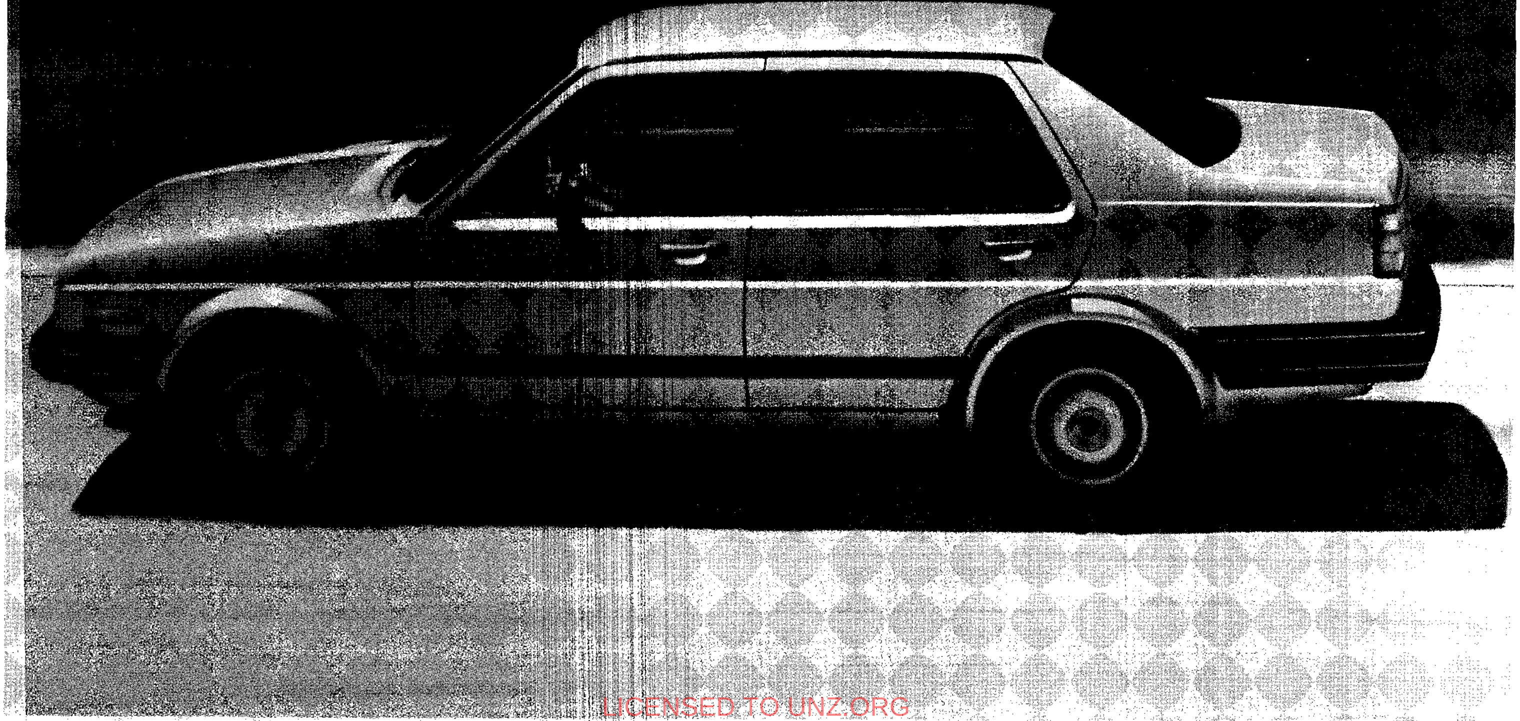

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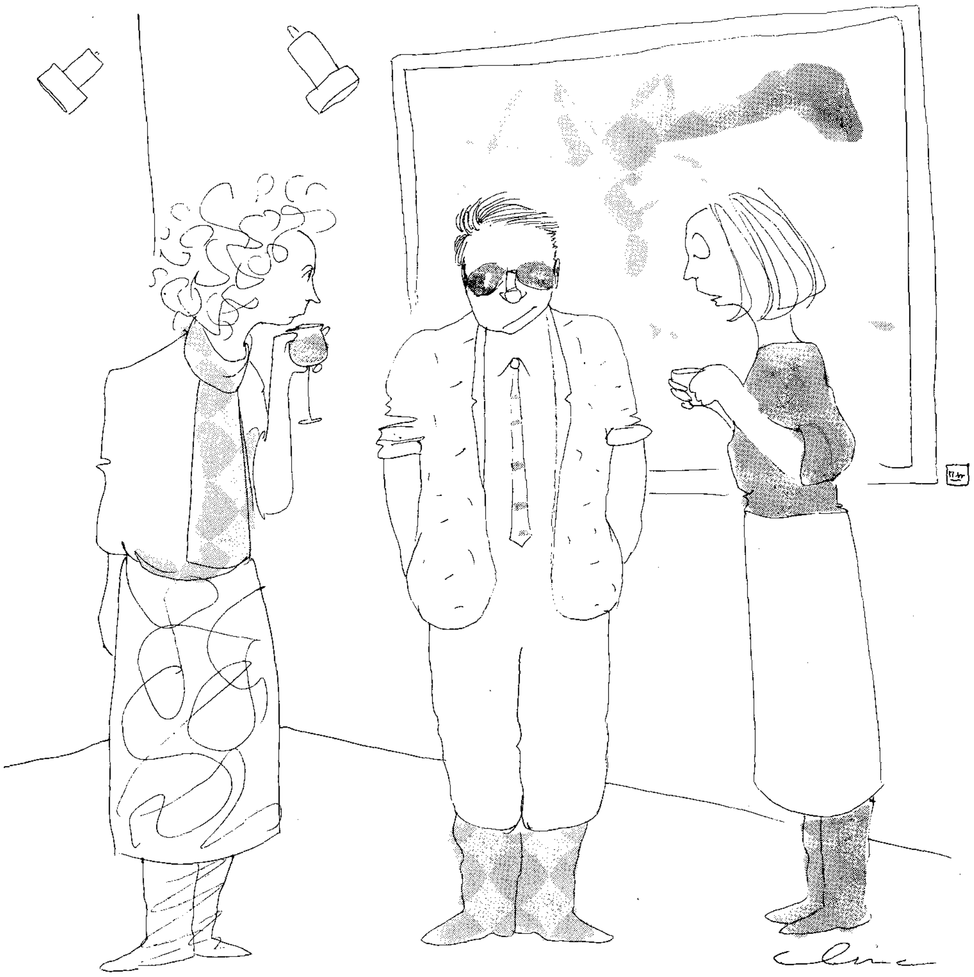
ing the possible hazards of industrial exposure to asbestos. On the other hand, it could rest assured that because of the pledge of confidentiality none of the results would find their way into the hands of anyone who might seek to remedy any hazards that were found.

Meanwhile, as the health situation at the Tyler plant went from bad to worse to appalling, a parade of government inspectors continued to troop through the place without any apparent awareness of the manifest hazards there. Additional surveys were conducted in 1969 and 1970, which also failed to warn of the existence of any possible health risks, even though the American Conference of Governmental Industrial Hygienists had by now proposed that the threshold-limit value for asbestos dust be lowered from five million particles per cubic foot—the standard that had been in effect for more than twenty years—to two million particles per cubic foot, which was considered the equivalent of twelve asbestos fibres longer than five microns per cubic centimetre of air. (Five microns is one-five-thousandth of an inch, and a cubic centimetre is an amount equal to what might be contained in a small thimble.) Thus, over a six-and-a-half-year period, five separate studies and inspections of the factory had been made, and more than a hundred samples of air had been gathered and transported to laboratories in various parts of the country and had there been counted, weighed, assayed, and painstakingly analyzed by industrial hygienists, who, depending on what standard they were using, had reported their findings in terms of dust particles per cubic foot or dust weight per cubic metre or fibre counts per cubic centimetre but never in terms of what the dust and fibres that the workers were inhaling might do to their health.



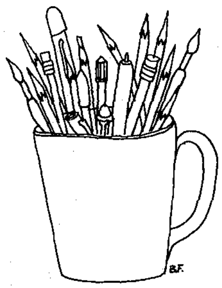
"This is Arthur. Arthur is graphically exciting."

• •

IN December of 1970, Congress passed the Occupational Safety and Health Act, which authorized the federal government to develop and set mandatory occupational-safety-and-health standards applicable to any business that engaged in interstate commerce. The Secretary of Labor was given the authority to promulgate these standards and to enforce them by conducting inspections of factories and other workplaces and by issuing citations and imposing penalties if the standards were violated. The Department of Health, Education, and Welfare was made responsible for developing criteria for the establishment of the safety-and-health standards, including regulations for dealing with toxic materials and harmful physical agents. So that the department could perform these functions, the act provided for a National Institute for Occupational Safety and Health, called NIOSH, which replaced the Bureau of Occupational Safety and Health, and which was given authority to enter factories for inspections and investigations. As a result, the business-as-usual attitude that had characterized government policy toward the asbestos industry for so long was soon shattered by a series of disclosures that, fittingly, had their apotheosis in the revelation of the working conditions at the Tyler plant.

In late October of 1971—a few weeks after Eugene Holman, a vice-president of Pittsburgh Corning, testified at the Borel trial that research financed by his company had given no indication that amosite asbestos could cause cancer or fibrosis—NIOSH investigators conducted an inspection of the Tyler factory. In some areas of the plant, they found asbestos-dust levels to be more than twenty times as high as a recently recommended Department of Labor emergency standard for asbestos of five fibres longer than five microns per cubic centimetre of air. Since asbestos-induced cancers generally take at least twenty years to develop, and the Tyler plant had been in operation for only seventeen years, they did not expect to find neoplasms among the sixty-three men working there, but they did find indications of asbestosis in seven of eighteen workers who had more than ten years of employment at the factory. And when they got around to examining Pittsburgh Corning's employment records they discovered that a total of eight hundred and ninety-five men had worked in the plant at one time or another. Considering the disastrous mortality figures of the men who had worked in the Paterson factory between 1941 and 1945, this was disturbing news, to say the least.

A preliminary report of the NIOSH survey, declaring that an extremely serious occupational-health situation existed at the Tyler plant, was sent on November 16th to the regional administrator for the Occupational Safety and Health Administration (OSHA), in Dallas. On November 23rd, two officials from the OSHA office made an inspection of the factory and found inadequate housekeeping, insufficient dust control, and improper wearing of respirators. Yet the inspectors failed to cite Pittsburgh Corning for any serious violations of the Occupational Safety and Health Act—infractions that could result in death or serious physical harm. Instead, they cited the company for some non-serious violations, including insufficient dust control, and proposed a fine of two hundred and ten dollars.



The OSHA citations, in spite of the mildness of the penalties that accompanied them, caused considerable consternation to the management people at Pittsburgh Corning, because they set March 31, 1972, as the date for completing extensive improvements in the ventilation and dust-control systems of the Tyler plant. Consequently, Pittsburgh Corning's board of directors met in mid-December of 1971 and decided to shut the factory. Production stopped on February 3, 1972, and over the next two months the plant was subjected to a cleanup of prodigious scope and intensity. By the end of February, most of its heavy equipment had been either cut up and buried or sold for junk, and by the end of April practically nothing remained except two dilapidated wooden buildings, which had once been warehouses at Camp Fannin, a Second World War training center and prisoner-of-war camp. At that point, the managers of Pittsburgh Corning apparently thought that they had put their troubles behind them. As for the eight hundred and ninety-five men who had worked in the Tyler plant over the years, they were out of sight and out of mind. In a sense, they, like much of the factory itself, were buried.

As things turned out, a major legal problem for Pittsburgh Corning and PPG Industries was soon posed by a young lawyer named Frederick M. Baron, who at the time the Tyler plant was closed was not even a year out of law school. Baron was born in 1947, of Russian-Jewish parents, in Cedar Rapids, Iowa. His mother, widowed when he was eight years old, had remarried and had taken her son to her new husband's home, near Austin. In 1965, Baron entered the University of Texas in Austin, where he got his B.A. degree in history and government, and in the fall of 1968 he entered the University of Texas School of Law. After graduating from law school, in May of 1971, Baron went to work for the firm of Mullinax, Wells, Mauzy & Collins, in Dallas, and on September 21st—the day the Borel trial began in Beaumont—he was licensed to practice law in Texas. Two years later, as Ward Stephenson lay dying, and the Fifth Circuit was preparing to hand down its decision in Borel, Anthony Mazzocchi, the director of the legislative department of the Oil, Chemical, and Atomic Workers International Union (OCAW), who had been trying for months to get someone to represent the workers at Pittsburgh Corning's Tyler plant—half a dozen firms had turned the case down—called Mullinax, Wells, Mauzy & Collins, whose senior partners accepted the case reluctantly and turned it over to Baron. Baron went to Tyler to meet with Herman Yandle, who had been chairman of the union committee at the Pittsburgh Corning factory, and learned what had gone on there. When Baron got back to Dallas, he spent the next few weeks reading decisions in old silicosis cases, and during the first week of October he got hold of the Fifth Circuit's decision in Borel, which had just been handed down.

"Borel convinced me that I should go the strict-liability route," Baron recalled ten years later. "However, the Tyler workers were factory employees who manufactured asbestos insulation, and were not allowed by law to sue their employer, and in order to bring a product-liability lawsuit in their behalf I obviously had to find a defective product. One big question was whether raw amosite asbestos was a product, and, if so, whether I could bring an action against the mining companies that supplied it. Another was whether or not I could sue Pittsburgh Corning's owners—PPG Industries and the Corning Glass Works. In October, I went ahead and signed up seven or eight prospective plaintiffs, including Herman Yandle, to power-of-attorney agreements. Then I drew up a complaint on their behalf, and on January 2, 1974, I filed a class-action lawsuit in federal district court in Tyler, asking a hundred million dollars in damages against PPG and its medical director, Dr. Lee B. Grant, Pittsburgh Corning, the Corning Glass Works, and several other defendants."

Baron explained that he was able to name Pittsburgh Corning in his complaint because one of his clients was the widow of a Tyler factory worker who had recently died of asbestosis, and under Texas law an employer could be sued if an employee's death occurred through gross negligence. "I wanted Pittsburgh Corning in the case so I could find out who had supplied raw asbestos to the Tyler plant, and therefore, once I had filed my complaint, I asked the presiding judge to sign an order requiring the company to furnish me with a list of all its asbestos suppliers," he said. "As you may imagine, the fact that I was suing the defendants for a hundred million dollars made headlines in Texas and across the nation. It also made me nervous. I was twenty-six years old at the time and had been practicing law for only a little more than two years, and I was afraid that I was in over my head. However, within a couple of weeks a trial lawyer named Rex Houston, who comes from Henderson, a town near Tyler, and who can talk the peel off a banana, also filed product-liability lawsuits in behalf of some Tyler-plant workers. And at the beginning of February I got a call from Scott Baldwin, of Jones, Jones & Baldwin, in Marshall—a town near the Louisiana border, about fifty miles east of Tyler—who told me that he had signed up some prospective plaintiffs from the Tyler plant. When Baldwin proposed that the three of us share any new clients from the factory, I was thrilled to death, because he was a consummate trial lawyer, whose prowess with juries was legendary."

Baron went on to say that when Pittsburgh Corning responded to the order requiring it to furnish the names of its asbestos suppliers he amended the complaint in Yandle v. PPG Industries, as the Tyler cases were titled, to name as additional defendants the North American Asbestos Corporation, of Chicago; Cape Industries, Ltd., of London; and EGNEP (Proprietary), Ltd., of Johannesburg, South

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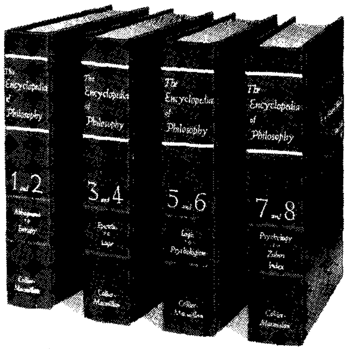

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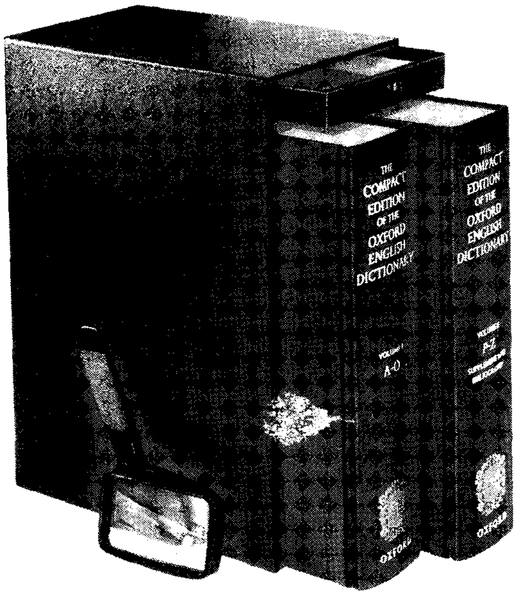

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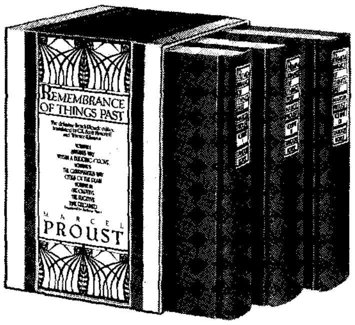

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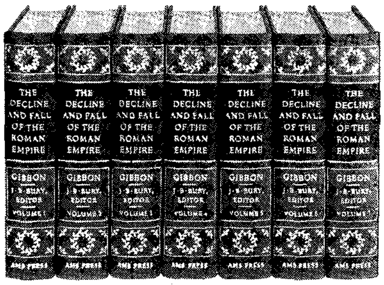

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Africa—a company that mined and sold between ninety and ninety-five per cent of the world's supply of amosite asbestos. During the spring of 1974, some of the other defendants filed a motion to stop discovery until the issue of whether the case should proceed as a class action was resolved. That fall, Judge William Steger, who was presiding over the case, held a trial on the issue and handed down a decision denying class action on several grounds, including the fact that the five hundred and seventy Pittsburgh Corning employees who worked at the Tyler plant over a ten-year period could not possibly have had the same exposure to asbestos dust. He then instructed Baron and his associates to renew their discovery.

DURING the winter of 1975, Baron, Baldwin, and Houston sent interrogatories and requests for documents to the various defendants and made arrangements to take depositions of some of their employees. Among them was Dr. Grant, who was central to the theory that Baron had evolved for trying the case. "We alleged that by allowing Dr. Grant to consult for its subsidiary, Pittsburgh Corning, PPG was liable under a theory of law governing the negligent performance of undertaking to perform services, which is sometimes referred to as the Good Samaritan doctrine," Baron explained. "Our contention was that Dr. Grant had failed to exercise reasonable care of the workers at the Tyler plant, because he had failed to inform them that asbestos could be harmful to their health, and that PPG was liable because Grant was their medical director and their agent. But when we took Grant's deposition we could not get him to admit that there was any specific health hazard at the Tyler plant before 1968, so we decided to focus our discovery upon the English and South African companies that had supplied Pittsburgh Corning with amosite asbestos. We felt sure we could stick the mining companies for having failed to place warning labels on the shipments of asbestos they had sent to the Tyler plant, and, with this in mind, we sent up to Chicago in May to depose Charles G. Morgan, who was the president of the North American Asbestos Corporation—a wholly owned subsidiary of Cape Industries, Ltd., a huge holding company. North American consisted of Morgan and four female secretaries. Its sole function was to serve as a marketing agent, or service organization, for the selling of South African asbestos in the United States, Canada, Mexico, and the Caribbean. Morgan took orders for asbestos from Pittsburgh Corning and placed them with the Cape Asbestos Fibres Company, of Uxbridge, near London. Cape Asbestos Fibres, another wholly owned subsidiary of Cape Industries, Ltd., then placed the order with EGNEP, Ltd., a South African mining company that was also owned by Cape Industries, and whose name is a backward spelling of Penge, an area in South Africa where amosite asbestos is mined. Morgan told us that sales transactions between EGNEP and North American Asbestos took place at dockside in South Africa, where North American was paid a three-and-a-half-per-cent commission on the gross amount. As a result, EGNEP and Cape Industries could claim that *they did no business in the United* States and that they were not, therefore, subject to the jurisdiction of any American court.

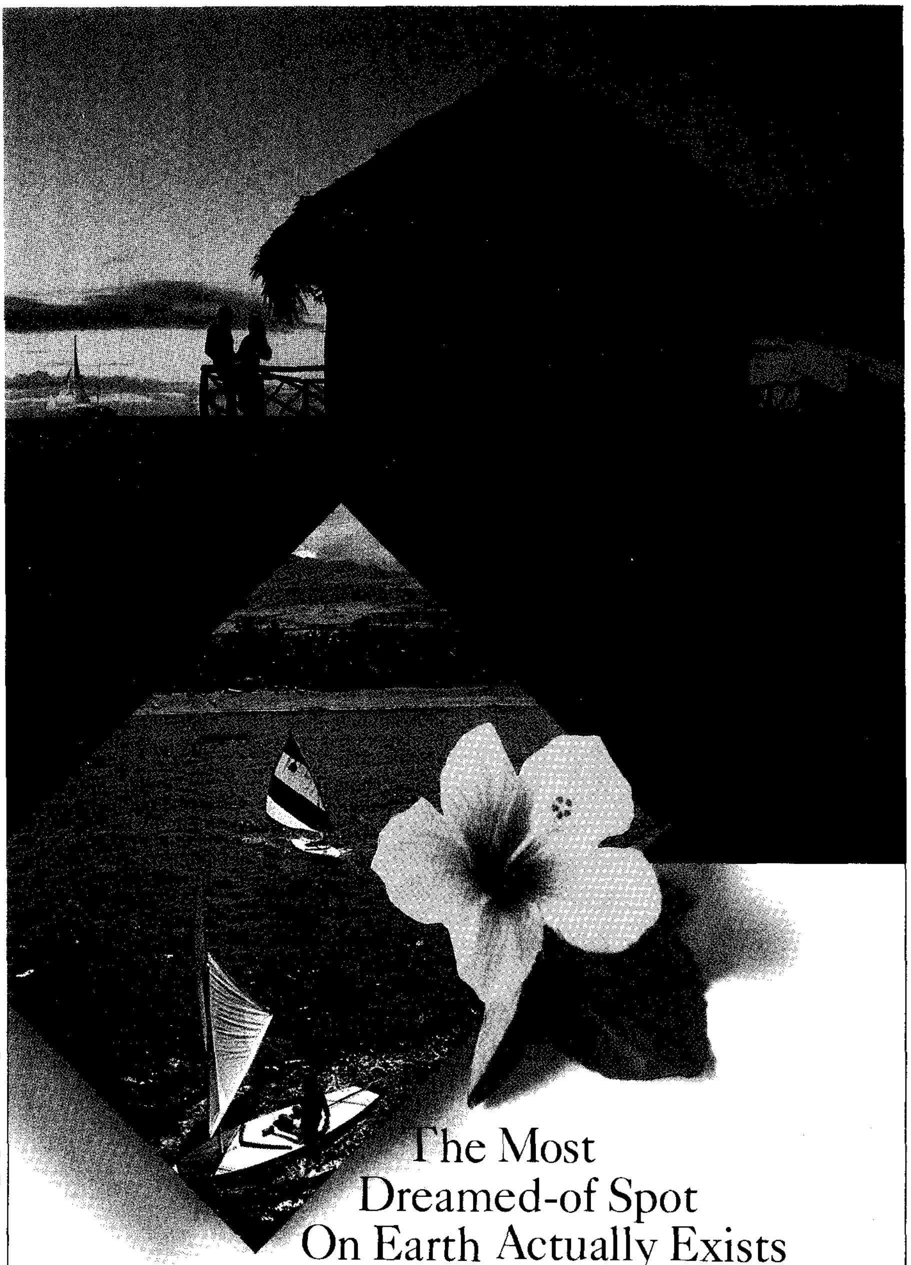
"Morgan also told us that during periods when EGNEP could not furnish Pittsburgh Corning with sufficient amounts of amosite, North American Asbestos had been able to purchase it from the United States government's General Services Administration, which controlled a huge supply of the stuff that had been stockpiled in Baton Rouge, Louisiana, during the Second World War. North American then resold it to Pittsburgh Corning, at a profit of five dollars a ton. Morgan went on to say that Dr. Richard Gaze, who was executive director of Cape Industries, Ltd., as well as a member of the board of directors of North American Asbestos, had furnished him with information regarding the health hazards of asbestos when he had first gone to work for North American, in 1971. According to Morgan, Dr. Gaze came to the United States once or twice a year to attend North American's board of directors' meetings. All this was very interesting, of course, and since Cape Industries was a very large and very solvent company it now became our prime target. The trouble was, we didn't want to sue Cape Industries in England, because in England there is no product-liability law as we know it, and since the company claimed that it did no business in the United States it was not clear whether or not we could sue it here. When we got back from Chicago, Scotty Baldwin, Rex Houston, and I held a two-day strategy meeting out at Scotty's house on Sabine Lake, and decided to subpoena EGNEP and Cape Industries, Ltd., under an international agreement that had been signed by both Britain and South Africa. We then called Richard Bernays, of Touchstone, Bernays & Johnston, in Dallas —the law firm that represented North American Asbestos, EGNEP, and Cape Industries—and asked him to produce Dr. Gaze for deposition in London. We also asked him to produce officials of EGNEP for deposition in Johannesburg. Scotty and I then got visas for South Africa, and in the first week of June we flew to London to depose Gaze."

SCOTT BALDWIN is a small, dark-haired man with a mischievous smile who looks a bit like Burgess Meredith. He was born in 1928, in Marshall—a town of twenty-five thousand people whose economy, like that of many other East Texas towns, is based on petroleum and timber—and he has lived there all his life. His grandfather was a lawyer in Marshall, his father was a doctor, and after graduating from the University of Texas School of Law, in 1953, Baldwin opened an office there. Over the past thirty years, he has developed one of the most successful personal-injury practices in the United States, winning approximately twenty-five million dollars for his plaintiff clients, as well as a reputation for being one of the best cross-examiners in the business, and today he is president of the sixty-thousand-member Association of Trial Lawyers of America.

"Our strategy toward Cape Industries and EGNEP was directed at piercing the corporate veil," he recalled recently. "When we deposed Charles Morgan, it became apparent that the North American Asbestos Corporation was nothing more or less than a bucket shop. That's East Texas slang for one of those fly-by-night oil-field offices staffed by some guy and a secretary who try to talk people into investing in a dry hole. In order to zero in on Cape Industries, the parent company, we knew we would have to show that it was directly responsible for selling a defective product. To avoid tipping our hand, we let the Cape people and their lawyers think that we were going after the South African mining company, EGNEP, but during the deposition of Richard Gaze we went straight for the jugular. We went after Cape Industries through him."

According to Fred Baron, Baldwin's deposition of Gaze was nothing short of masterly. "Our London solicitor's office was in Salisbury Court, near the Strand," he recalls. "It was a wonderfully musty place, at least two hundred years old, and straight out of Dickens. In fact, the reporter was using a dip pen and an inkwell. When the deposition got under way, on the afternoon of June 4th, we all sat down at a huge conference table. Richard Gaze was a tall, elegant, and immaculately tailored man of fifty-seven. He wore a Harris-tweed suit and vest. Scotty, on the other hand, had put on a loud sports jacket, slacks, and bright-yellow Argyle socks, and right off the bat he crooked his leg over the edge of the table and said in a deep East Texas drawl that he had a bit of trouble understanding English accents, so would Dr. Gaze please be sure to speak slowly and distinctly. Scotty was deliberately acting like a hayseed in order to get Gaze riled up—that is a tactic we lawyers sometimes use when we know we have a reluctant witness on our hands, because it is usually easier to get information out of someone who is angry or on the verge of losing his composure.

"In any case, he quickly got Gaze to admit that he had known about the health hazards of asbestos from the very first day he worked for Cape Industries, in 1943, and that he had felt a sense of responsibility about making sure that Cape's subsidiary companies were informed of these hazards. A bit later, Scotty lowered the boom by asking Gaze point-blank if he had ever informed any purchaser of asbestos that the stuff might be harmful to the workers who used it. At first, Gaze pleaded a faulty memory, but then he gave an answer that brought my heart to my throat. He said that way back in 1961, even before Pittsburgh Corning bought the Tyler plant from UNARCO,



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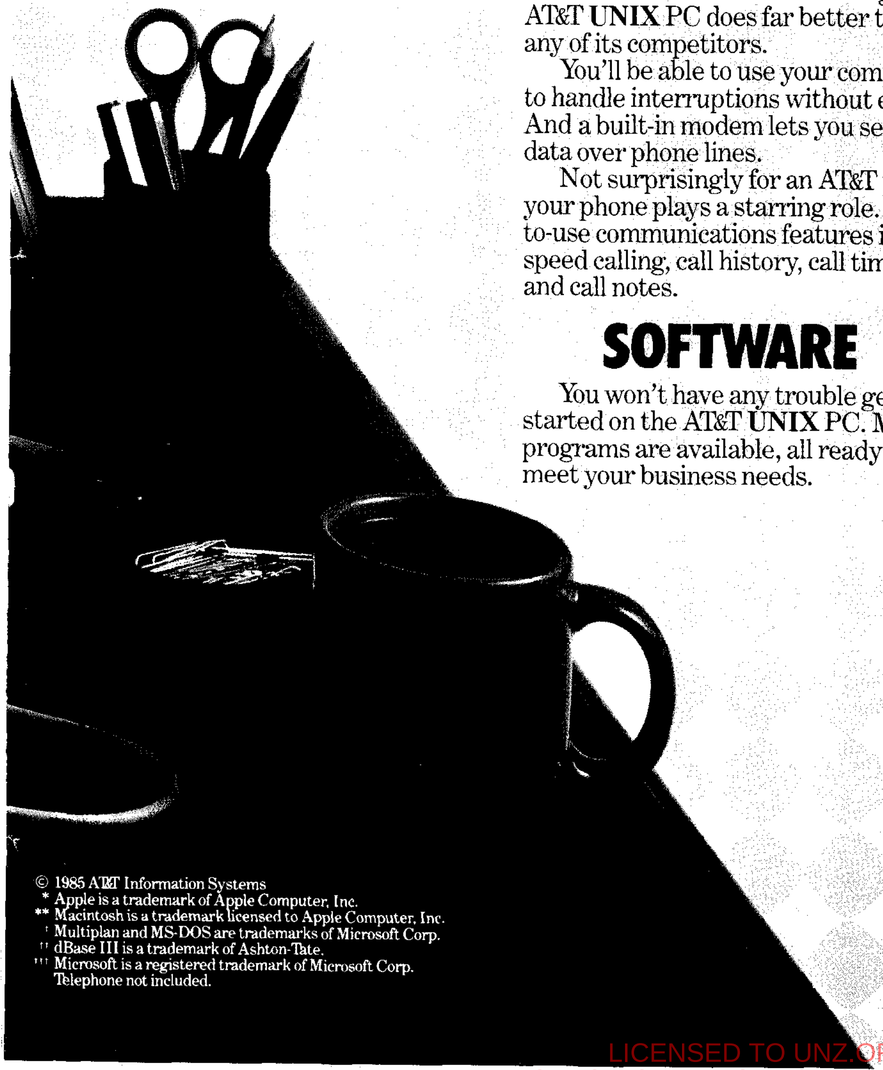

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he had warned the directors of Pittsburgh Corning that asbestos could pose a very serious danger to their workers. He went on to say that he had discussed the problem at length with Russell Brittingham, who was then the president of Pittsburgh Corning, and with Robert Buckley, who was a vice-president of the company."

At this point in the deposition, Baldwin asked Gaze how long these discussions had continued.

"For as long as I was visiting Pittsburgh," Gaze replied.

"Was that until the time they quit buying from you?" Baldwin asked.

"Yes," Gaze said. "My last visit to Pittsburgh would be in 1970 or 1971. I am not sure."

"Would it be fair, then, to say, Dr. Gaze, that you discussed this asbestos and the potential hazards of it with Pittsburgh from 1961 down to about 1971?"

"Yes," Gaze answered.

Later, Baldwin asked Gaze if, as the executive director and chief scientist of Cape Industries, he could have caused a warning label to be placed on the bags of asbestos that were shipped to the Tyler plant from South Africa between 1961 and 1971.

"I could have recommended it," Gaze replied.

"And you could have seen that it had been done had you seen fit to do so?"

"Yes."

On the following day, just before the deposition ended, Baldwin again asked Gaze if he had realized back in the nineteen-fifties that asbestos was dangerous to work with.

"Yes, but I want to make my position quite clear on this, Mr. Baldwin," Gaze replied. "I realized that precautions needed to be taken in the handling of this material. What I realize now I was in error about was the extent of the precautions which needed to be taken."

"What precautions do you feel should have been taken that were not when you look back?" Baldwin asked.

"With hindsight, I believe that our siting of dust-exhaust machinery was not sufficient to reduce the concentration of asbestos dust in the atmosphere to a sufficiently low level."

"But what I am asking you is that you don't intend to imply that you have just recently come upon the knowledge that asbestos can cause the condition of asbestosis."

"No," said Gaze, who would die of mesothelioma in 1982, at the age of

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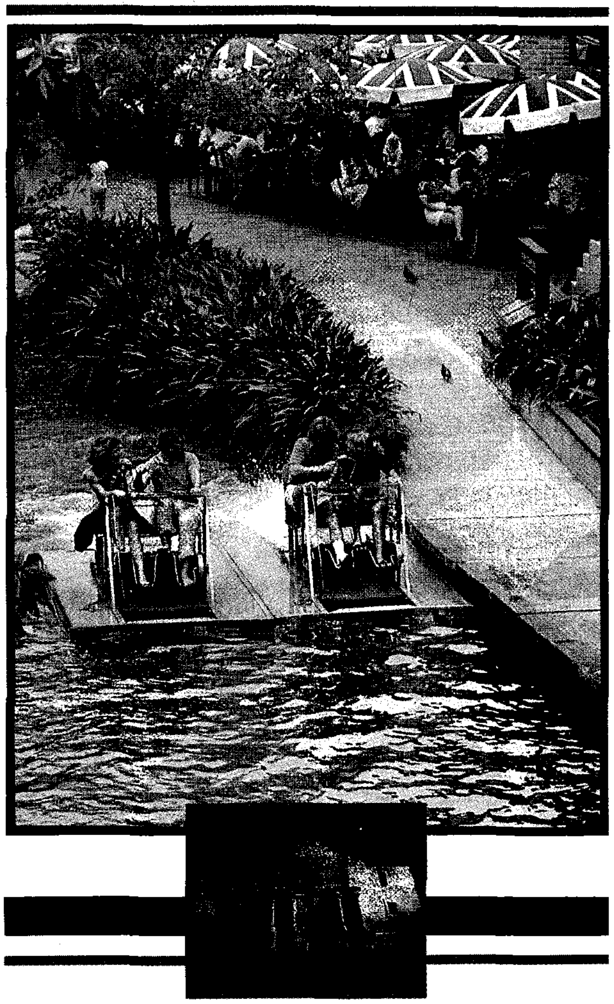

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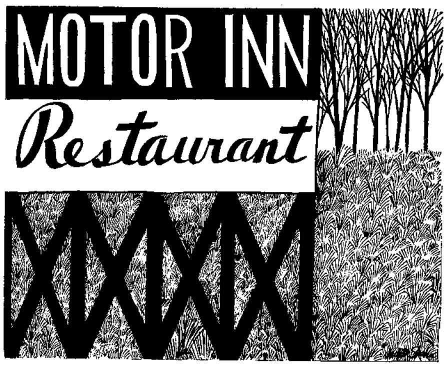
sixty-five. "I knew that asbestos, improperly handled, could cause asbestosis, or breathing asbestos dust at too high quantities for too long a time could cause asbestosis. I have known this since the first day I was employed."

A FEW days after Gaze was deposed, Baldwin and Baron were notified that their visas to South Africa had been cancelled, because of a South African law prohibiting disclosure of information about the nation's strategically important industries. However, Gaze's testimony had contradicted PPG's claim that it didn't know about the hazards of asbestos, and had also contradicted Cape Industries' contention that it did no business in the United States. Moreover, Gaze had testified that Cape Industries exercised control over its South African operations. For these reasons, Baldwin and Baron came back from England feeling a lot better about their case. Soon after returning to Dallas, Baron left Mullinax, Wells, when the firm wouldn't permit him to try an asbestos case in Florida, and was forced to relinquish Yandle v. PPG Industries. He was nevertheless able to stay in the litigation, because Rex Kirby, a lawyer in Tyler who had signed up some fifty clients from the Pittsburgh Corning plant, offered to associate him in his cases and to split the attorneys' fees with him. As a result, he eventually came to represent almost ninety plaintiffs from the Tyler factory.

During the rest of 1975 and in 1976, Baron, Baldwin, and Houston focussed their attention on the involvement of the United States government in the case. "We knew that the General Services Administration had shipped amosite asbestos to the Tyler plant in the same burlap sacks—without warning labels of any kind—in which EGNEP had originally shipped it to the States, so we figured that at the very least we could nail the government for failure to warn," Baron said. "Then, in 1976, a Department of Labor inspector admitted in a deposition that he had not worn a respirator in the Tyler plant for fear of alarming the workers and causing them to ask questions about their health. The minute he said that, we knew we had a second heavy rap to hang around the government's neck, but it wasn't until the winter of 1977, when we deposed Dr. Lewis J. Cralley, of the Public Health Service, that we found our smoking gun. Cralley admitted that when the division was preparing to study asbestos factories across the nation, back in the nineteen-sixties, he had entered into a confidentiality agreement with industry that prohibited him from giving out details concerning the exposure of the people who worked in them. He also admitted that, as a result, the Public Health Service had not made any recommendations either to workers or to their unions about how they might protect themselves from the hazard of toiling in the excessive dust levels that existed in the Tyler factory and other asbestos plants."

Six months later, Baron and two other plaintiff attorneys deposed Charles E. van Horne, who had been the assistant manager and safety director of the Tyler plant from 1964 to 1968 and the manager of the factory from 1968 until it was shut, in 1972. A gray-haired, self-assured man in his early fifties, van Horne had been hired by J. W. McMillan, the former manager of the Tyler plant, who died of mesothelioma in 1970. During his deposition, which took place in Tyler in August of 1977, van Horne was questioned about the letter Dr. Grant had written to McMillan on April 3, 1968, informing him that the dust levels measured in the Tyler plant by Cralley's group posed a significant health hazard, and that some employees would develop asbestosis and lung cancer as a result. Acording to van Horne, McMillan did not appear to take Grant's warning seriously, saying, "I have lived, eaten, and breathed asbestos for years, and I smoke, and I don't think they know what they're talking about."

Judge Steger had set trial for Yandle v. PPG Industries at the end of the month, and he now began to put pressure on the attorneys involved in the case to reach a settlement. "We knew that he meant business when he ordered that all thirty-five of us report to the United States marshal at nine one morning, and that we be locked inside his conference room at the rear of the courthouse every day from then on, with an hour out for lunch, until we had explored and exhausted all the possibilities for settlement," Baron said. "So there we sat, staring across a table at each other, all of us scared to death of going to trial. We plaintiffs' attorneys were nervous about the sheer complexity of the case we would have to present—for example, having to explain the enormous disparity in exposure to asbestos among the various workers at the Tyler plant—and we were afraid of losing the jury because of it. As for the defendants' lawyers, they were worried about the damaging depositions we had taken. The question was how and on what basis to settle.



"Back in July, Scotty, Rex Houston, and I had reviewed the medical records of our clients in order to figure out what the case was worth. About four hundred and fifty of them had worked at the Tyler plant between 1962 and 1972—the ten-year period in which Pittsburgh Corning owned it. The trouble was that some of these men had been there for the entire decade, some for a few years, some for a matter of months, and many for only a week or two. One of our biggest problems was to try to determine what value we should place on the cases of men who had minimal exposure and no sign of disease, because there was a large possibility that such cases might be dismissed. In the end, we established a baseline of fifteen thousand dollars for these cases—a sum we considered adequate compensation for worry and emotional strain. Then we assessed the serious cases—men who had developed asbestosis or cancer—and came up with values ranging from a hundred and fifty thousand dollars for partially disabling asbestosis to four hundred thousand dollars for cases of asbestosis or asbestos-related cancer that had ended in death. Eventually, we came to the conclusion that the whole thing could be settled for twenty million dollars."

Though Draconian, Judge Steger's tactic of locking the attorneys for both sides in his conference room proved to be an effective way of achieving a settlement. "We spent sixteen hours a day five days a week for three hellish weeks in that room," Baron recalls. "During that time, I came to know why Scotty Baldwin is considered one of the most brilliant legal tacticians in the country. From the very beginning, he insisted that the key to a good settlement lay in convincing PPG that its liability was deepest. PPG and its primary insurance carrier, Travelers, had hired David Armstrong, an attorney in Pittsburgh, to handle their case, so once we got locked up in Judge Steger's conference room Scotty began working Armstrong over to convince him that PPG could wind up paying the whole ticket. The idea was to get Armstrong to apply the screws to the other major defendants—Cape Industries and the United States government. However, the two lawyers from the Department of Justice who had been assigned to the case dug in their heels and refused to talk settlement of any kind. At that point, Armstrong told them that unless the government admitted its responsibility in the Tyler affair and agreed to kick in to a fair settlement the other defendants would team up with the plaintiffs and lay the entire blame on the government's doorstep. He had already tried to convince them that he meant business by filing a third-party complaint against the United States. The two government lawyers then did just what we hoped they would do. They put pressure on their superiors in the Justice Department to come up with some money.

"Meanwhile, Armstrong had dragged UNARCO into the case, claiming that UNARCO had sold Pittsburgh Corning a defective plant in 1962. Armstrong had pegged UNARCO for a half-million-dollar contribution to the settlement, but Scotty took UNARCO's attorney aside and told him that he could get his client out of the case for a cool million, and the UNARCO people agreed to this offer, even though they had a motion of dismissal pending before Judge Steger. PPG had also brought the Oil, Chemical, and Atomic Workers International Union into the case, claiming that the union had failed to protect the health of the Tyler workers by not providing them with respirators. Let me tell you, there was a lot of arm-twisting going on. The defendants' first settlement offer was nine million dollars. We turned it down flat, and after two more weeks in Steger's pressure cooker they agreed to settle for the twenty million dollars we were asking. The OCAW contributed a hundred and fifty thousand dollars. UNARCO kicked in the million. PPG and Pittsburgh Corning forked out eight million fifty thousand. Cape Industries and EGNEP got nailed for five million two hundred thousand. And the United States government, after much screaming and protesting, finally agreed to ante up five million seven hundred and fifty thousand dollars of taxpayers' money. No one, of course, admitted any liability."

The agreement in Yandle v. PPG Industries was reached in secret on September 28, 1977, but because of subsequent recalcitrance on the part of the government the plaintiffs received no money until the spring of 1978. "The government people dragged their feet shamefully, and it took tremendous pressure from Judge Steger and the rest of us to get them to live up to their part of the bargain," Baron said. "In the end, I feel we did about as well as we could for our clients in terms of money. I have mixed feelings, though, about some of the other aspects of the settlement. For example, Armstrong insisted that we plaintiff attorneys agree not to take on any new clients from the Tyler-factory work force. We were also asked to agree that whatever evidence we had obtained in the course of our discovery in the case would not be handed over to subsequent plaintiffs. At the time, I went along with these demands, but I have since come to realize that doing so was a serious mistake, and I'm convinced that if we had said no to Armstrong he would have backed down. In any event, in keeping with the terms of the agreement, Judge Steger issued a gag order forbidding all parties to discuss the case. At the same time, he sealed all the papers in the case. As a result, the deposition of Richard Gaze, which provided powerful evidence of what the Pittsburgh Corning people really knew about asbestos disease and when they knew it, remained under wraps for the next five and a half years."

This turned out to have serious consequences for hundreds of asbestos-disease plaintiffs, who would bring product-liability lawsuits against Pittsburgh Corning during the next five years, because the company was already claiming in answers to interrogatories that it had no knowledge of the asbestos hazard until the middle of the nineteen-sixties—a contention that plaintiff lawyers had no way of effectively countering. In January of 1978, four months before Judge Steger issued his seal order, Robert E. Buckley, the Pittsburgh Corning vice-president whom Gaze said he had warned about the asbestos hazard back in 1961, testified in a deposition he gave in connection with some asbestos-disease lawsuits brought by shipyard workers and their survivors in Virginia that Gaze had never told him about the hazard, and that he had not become aware of it until 1965 or 1966, when he read some newspaper articles about it. After Judge Steger's order, Pittsburgh Corning not only continued to claim that it was ignorant of asbestos disease until the publication of Dr. Selikoff's studies in 1964—thus implying that it had entered into the business of manufacturing and selling asbestos products back in 1962 without knowing of the asbestos hazard—but made such claims without being seriously contradicted. This state of affairs went on until 1983, when some enterprising plaintiff attorneys, who had learned about the Gaze deposition, prevailed upon Judge Steger to release it; they then succeeded in having it admitted in evidence in future asbestos-disease cases in which Pittsburgh Corning was a defendant, and went on to turn up evidence that company officials had been sent articles about the asbestos hazard as early as May of 1962.

As for the Tyler-plant settlement, it got a tremendous amount of publicity all across the nation in the winter of 1978. It brought Baron, Scott Baldwin, and Rex Houston a lot of new business, and it made them a lot wealthier. In fact, after paying referral fees to more than a dozen other lawyers who had signed up plaintiffs from the Tyler factory and associated their cases with Baron, Baldwin, and Houston, each of the three made more than a million dollars for his five years of work. As for their former clients and the other Tyler-factory workers, researchers from the University of Texas have determined that they are dying of lung cancer at a rate that is four or five times the national average. But the majority of these workers are just now approaching twenty years since the onset of their exposure to asbestos, and epidemiologists such as Dr. Selikoff expect that fully a third of the nearly nine hundred men who worked in the factory during the seventeen years and three months it was in operation will die of asbestosis or asbestos-related cancer. It is not known how many of their wives, children, and other relatives will develop asbestos disease as a result of household exposure. It is known, however, that the mother of Herman Yandle—

he received a hundred and thirty thousand dollars in the settlement—died of mesothelioma in February of 1983, at the age of sixty-nine. Her only exposure to asbestos occurred during the nineteen-sixties, when she washed the work clothes worn by Herman and his brother, who were living at home while they worked at the factory.

IN the years to come, actions similar to Yandle v. PPG Industries would be initiated in other parts of the country by asbestos-factory workers who sought to get around the shield of workmen's compensation, either by suing the mining companies that supplied raw asbestos to their employers or by suing their employers for fraudulent suppression of information regarding the danger of asbestos. Most of the early lawsuits, however, were brought by individual insulators who, like Clarence Borel, sued the manufacturers of the asbestos insulation they had used in their work for failure to warn them that the material was hazardous to their health. As discovery was undertaken in these cases, a vast amount of incriminating evidence began to come to light, and when it was pieced together it told a story of corporate misconduct going back fifty years.

One of the most important early finds was made by Thomas W. Henderson, a thirty-six-year-old lawyer from Pittsburgh. Henderson is a lanky, dark-haired, bespectacled man, who was born in Washington, Pennsylvania, a small manufacturing town about twenty-five miles southwest of Pittsburgh. His father was a steelworker at a local sheet mill, and as a boy Henderson worked in the plant's pickling area, where steel sheets were cleaned with acid before being shipped. After attending Washington High School, he went to Brown University, where he received a degree in sociology in 1962, and then to law school at Duquesne University, in Pittsburgh. Upon his graduation from Duquesne, he joined a law firm in Pittsburgh and soon met a man named George Cope, who was chairman of a United Steelworkers of America safety-and-compensation committee at a Jones & Laughlin Steel Corporation mill. During 1967 and 1968, Cope sent Henderson a number of coke-oven workers who were suffering from lung cancer as a result of their exposure to coal-tar-pitch volatiles. At that time, the Pennsylvania workmen's-compensation law for occupational disease contained a two-year statute of limitations and provided only sixty dollars a week for total disability.

In 1971, Henderson brought a second-party lawsuit against the Allied Chemical Corporation, alleging that it had designed a defective coke oven, whose door had crushed a steelworker to death, and when, in 1973, the case was settled out of court for fifty thousand dollars he became interested in the possibility that product-liability law might provide the best legal route to obtaining justice for the cancer-stricken workers he represented, who by then numbered thirty-five. Meanwhile, in 1972, he had acquired two steelworker clients—Andrew Carollo and Roy DeRocco—who worked as pipe coverers at the Wheeling-Pittsburgh Steel Corporation's Monessen plant and had been found to have developed early signs of asbestosis. Henderson filed workmen's-compensation claims for both men in the spring of 1973, and that fall he read a notice about the Borel case in the monthly newsletter of the Association of Trial Lawyers of America, and set about obtaining a full copy of the Fifth Circuit's decision.

Later in 1973, Henderson met Dr. Thomas F. Mancuso, a research professor of occupational health at the University of Pittsburgh's Graduate School of Public Health. After hearing about Henderson's asbestos cases, Mancuso advised him to get in touch with Dr. Harriet L. Hardy, a well-known public-health scientist, who was the assistant medical director in charge of the environmental medical services at the Massachusetts Institute of Technology. Henderson followed Mancuso's advice, and in the spring of 1974 he and Dr. Hardy had lunch at the M.I.T. Faculty Club, in Cambridge. It was a meeting that led to some astonishing disclosures.

Dr. Hardy told Henderson that during the late nineteen-forties she had attended a symposium on occupational disease at the Trudeau Foundation's Saranac Laboratory, in Saranac Lake, New York, where animal experiments involving asbestos had been conducted since the early nineteen-thirties. At the meeting, she encountered Dr. Kenneth W. Smith, the medical director of Canadian Johns-Manville, who told her that he was concerned about a recent study showing that lung cancer was present in a high percentage of the deaths caused by asbestosis among asbestos-factory workers in England. Dr. Hardy said that she advised Dr. Smith to have a study of the

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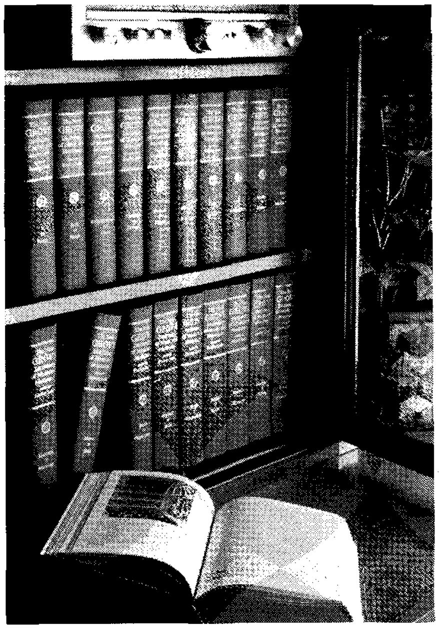

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association between lung cancer and asbestosis performed at Massachusetts General Hospital but that Smith later told her he couldn't get permission from his superiors at Johns-Manville to do this.

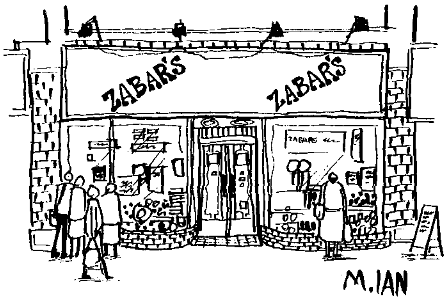
In June of 1974, Henderson filed a product-liability lawsuit in behalf of Carollo and DeRocco in the Court of Common Pleas of Allegheny County against a number of leading asbestos-insulation manufacturers. Among them were Johns-Manville; Owens-Corning; Pittsburgh Corning; Eagle-Picher Industries; and Forty-Eight Insulations, Inc., of Aurora, Illinois. During the next year, he amended the complaint to include UNARCO Industries; the Philip Carey Manufacturing Company; and the Celotex Corporation. Meanwhile, he sent out the usual interrogatories, and in the course of the discovery process he learned that Dr. Smith had retired as medical director of Johns-Manville in 1966 and was living in Windsor, Ontario.

"I called Dr. Smith at his office in Windsor late in the afternoon on November 4, 1975," Henderson recalls. "I told him that I was an attorney involved in asbestos litigation, that I was suing his former employer, and that I had talked with Harriet Hardy. Imagine my surprise when he not only proceeded to talk very cordially to me but seemed eager to answer my questions. A week later, I flew to Windsor and met with him for nearly four hours. Dr. Smith was a portly, partly bald, cherubic-faced man of sixty-one with an easy smile and a gentle manner, and he was then engaged in rehabilitating alcoholics and in giving psychiatric counselling to students at a local university. He himself had taken early retirement from Johns-Manville because of an alcohol problem, but he said that he had not had a drink in six years.

"He then proceeded to tell me some astonishing things that had happened during his career at Johns-Manville, which had begun in 1944. For example, he told me that in 1949 he knew that asbestosis was developing among the workers in the asbestos mines and mills Johns-Manville operated in Quebec Province. Even more important, he said that he soon became convinced that employees of Johns-Manville's insulation-purchasing customers, who worked as insulators and pipe coverers, were also at risk of developing disease. In fact, Smith said that during the early nineteen-fifties he and Hugh Jackson, Johns-Manville's corporate-safety manager, had discussed whether to place warning labels on asbestos-insulation products. Smith's disclosures about what J.-M. officials knew and when they knew it were, of course, sticks of legal dynamite, and to make sure I had all the ammunition he could provide I met with him twice again, in November and December. He then agreed to come to the States and give a deposition in the case of Carollo and DeRocco v. Forty-Eight Insulations, Inc., et al., as it was called. He also furnished me with copies of letters, memos, and other documents, which clearly showed that he and other high-ranking officials of Johns-Manville had early knowledge about the hazards of asbestos and that they should have taken steps to protect the health of workers such as Carollo and DeRocco, who had no idea that using asbestos could be harmful to them. As for Dr. Smith's motive in revealing all this incriminating evidence, I can only tell you what I surmise. I think that his conscience was bothering him and that he wanted to set the record straight."

Up to that point, Johns-Manville and its primary product-liability-insurance carrier, the Travelers Insurance Company, had no idea that Smith had been talking to Henderson, for Henderson was careful to tell no one except his closest associates about his three trips to Windsor. In the meantime, he arranged to depose Hugh Jackson, in order to pin him down under oath about just when he and Smith had first discussed placing warning labels on Johns-Manville asbestos-insulation products.

Jackson was deposed in Pittsburgh on December 17, 1975. A little more than four years earlier, he had testified under oath in Borel v. Fibreboard that until Dr. Selikoff's 1964 study he and other Johns-Manville officials had had no idea that asbestos insulators might be encountering health problems as a result of their occupation. Nevertheless, when Henderson asked him if there had ever been any discussions about placing warning labels on asbestos-containing products between 1947 and 1960, he gave this reply: "If there were, it would have been toward the—and I don't know of a clear recollection, that is why I am stating it this way—if there were, it would have been toward the 1960 date rather than earlier."



"Do you recall there being these discussions?" Henderson asked.

"I can answer that with the exception of the timing of it," Jackson said cautiously. "Yes, Dr. Smith—and again I am going to put it in the time area approaching the 1960 period—had discussions."

Henderson then asked Jackson if his answer "was that sometime in the fifties approaching the 1960 year there were discussions at least between you and Dr. Smith with respect to the placement of certain warnings on packaging containing asbestos products?"

"Yes," Jackson replied.

After gaining these admissions from Jackson, Henderson proceeded to announce that he would call Dr. Smith. This not only took Manville's attorneys by surprise but made them extremely nervous. In fact, one of them telephoned Henderson to say that Smith was no longer an employee of the company and probably would not consent to testify. Still, at 10 A.M. on January 13, 1976, Dr. Smith presented himself at the offices of Johns-Manville's attorneys, Stein & Winters, which were in the Frick Building, in downtown Pittsburgh, and the deposition got under way. To begin with, Smith testified that he had graduated from the McGill University medical school, in Montreal, in 1941, and that in 1944 he became a medical officer for the Canadian Johns-Manville Company at its Jeffrey Mine—the world's largest chrysotile-asbestos mine—in the town of Asbestos, Quebec. (Chrysotile asbestos is a variety of the mineral that accounts for about ninety-five per cent of the world's production of asbestos.) For the next two years, he worked under the direction of Dr. R. H. Stevenson, the medical director of Canadian Johns-Manville, whom he succeeded in 1946. Smith went on to say that from almost the first day he went to work for Canadian Johns-Manville he saw workers who were afflicted with asbestosis.

Henderson asked him if there had been any incidents revealing that people other than Johns-Manville employees were exposed to the hazards of

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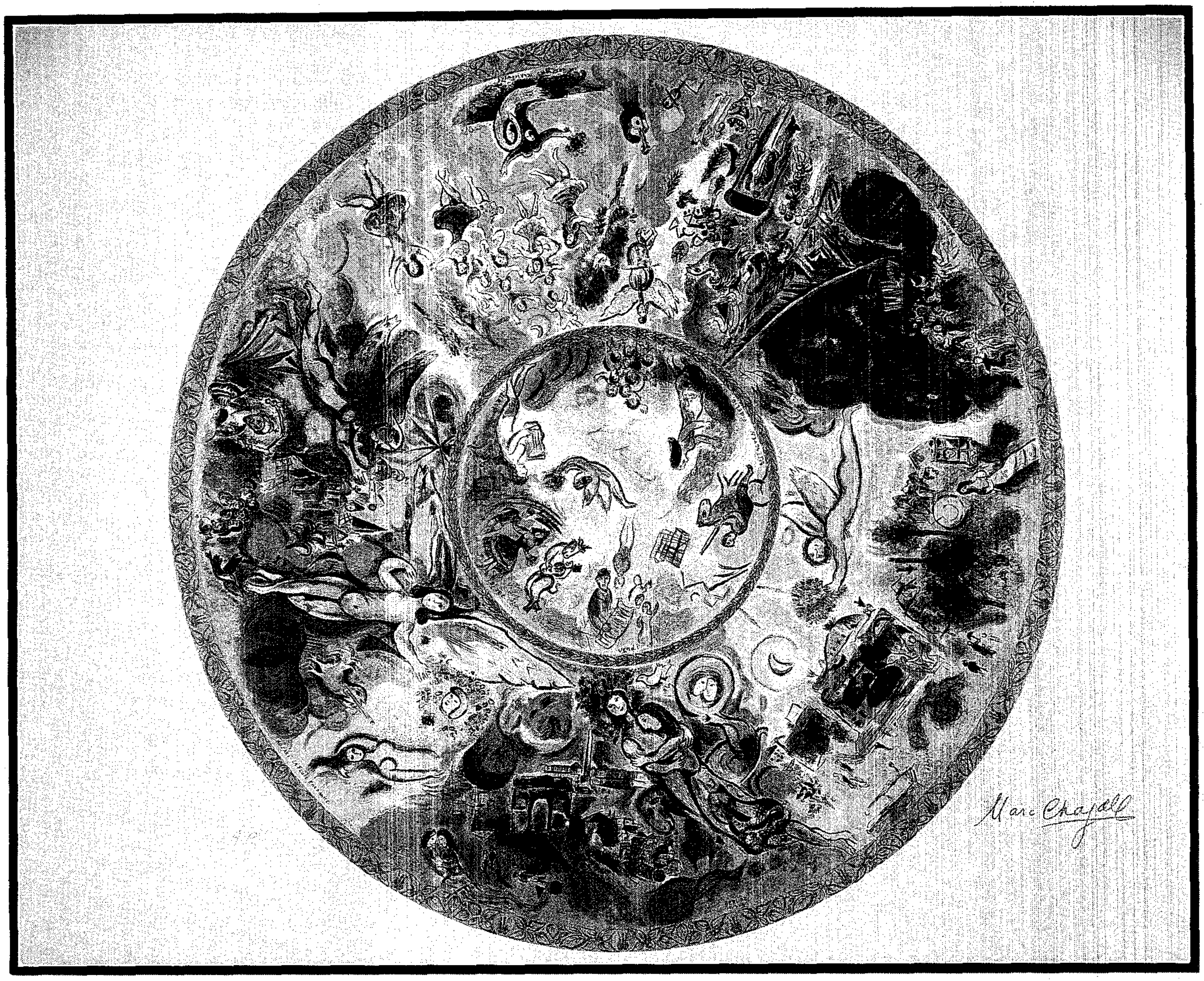

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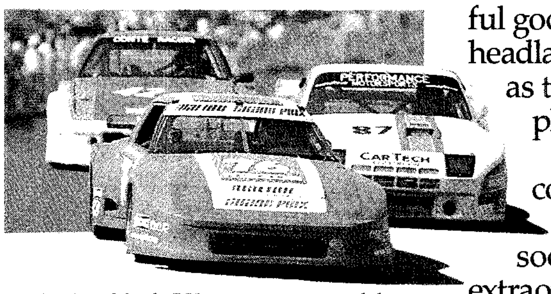
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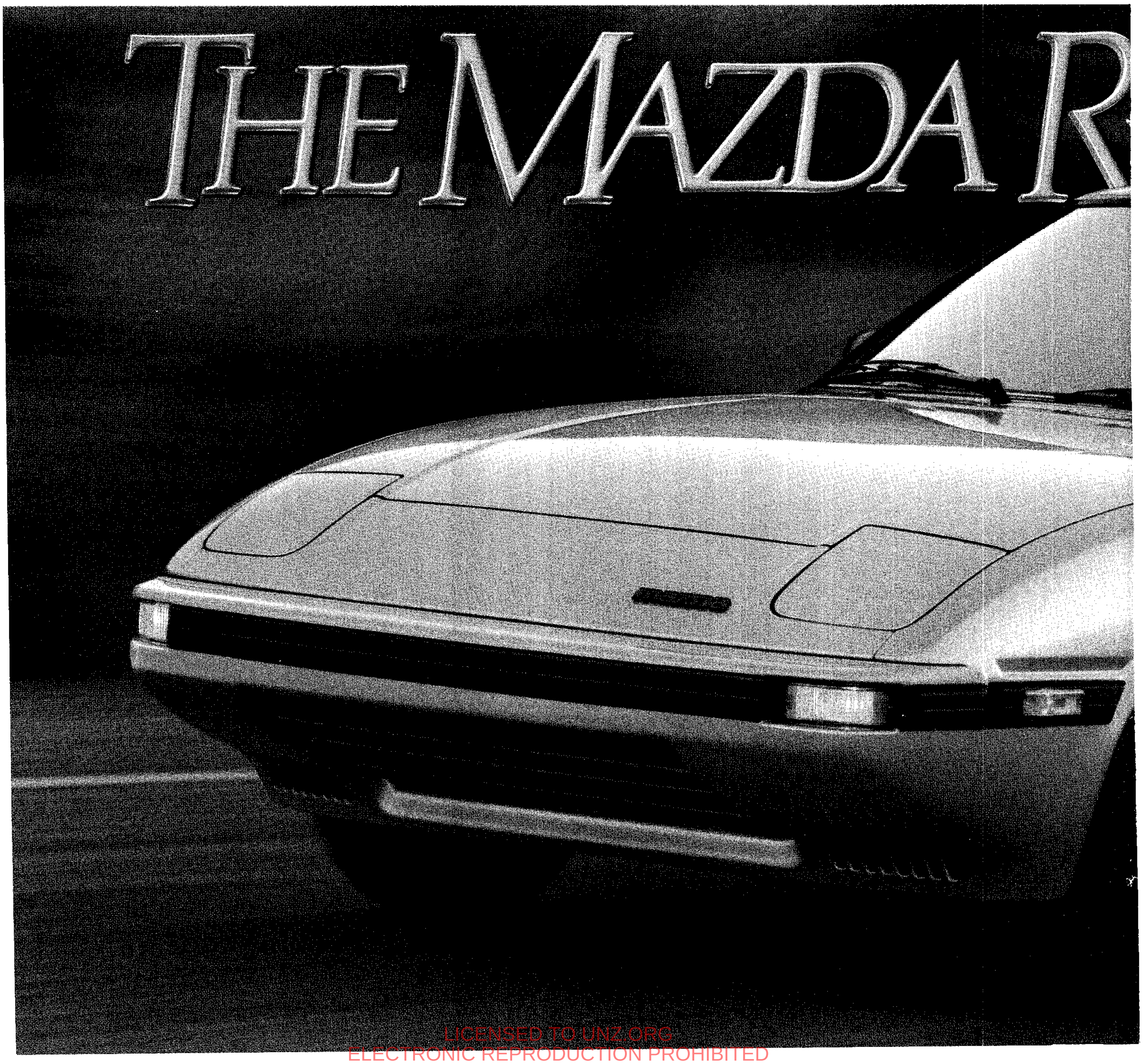

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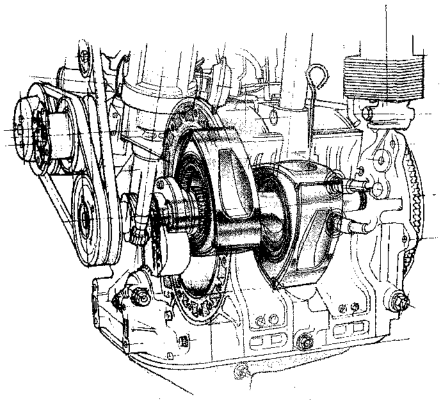

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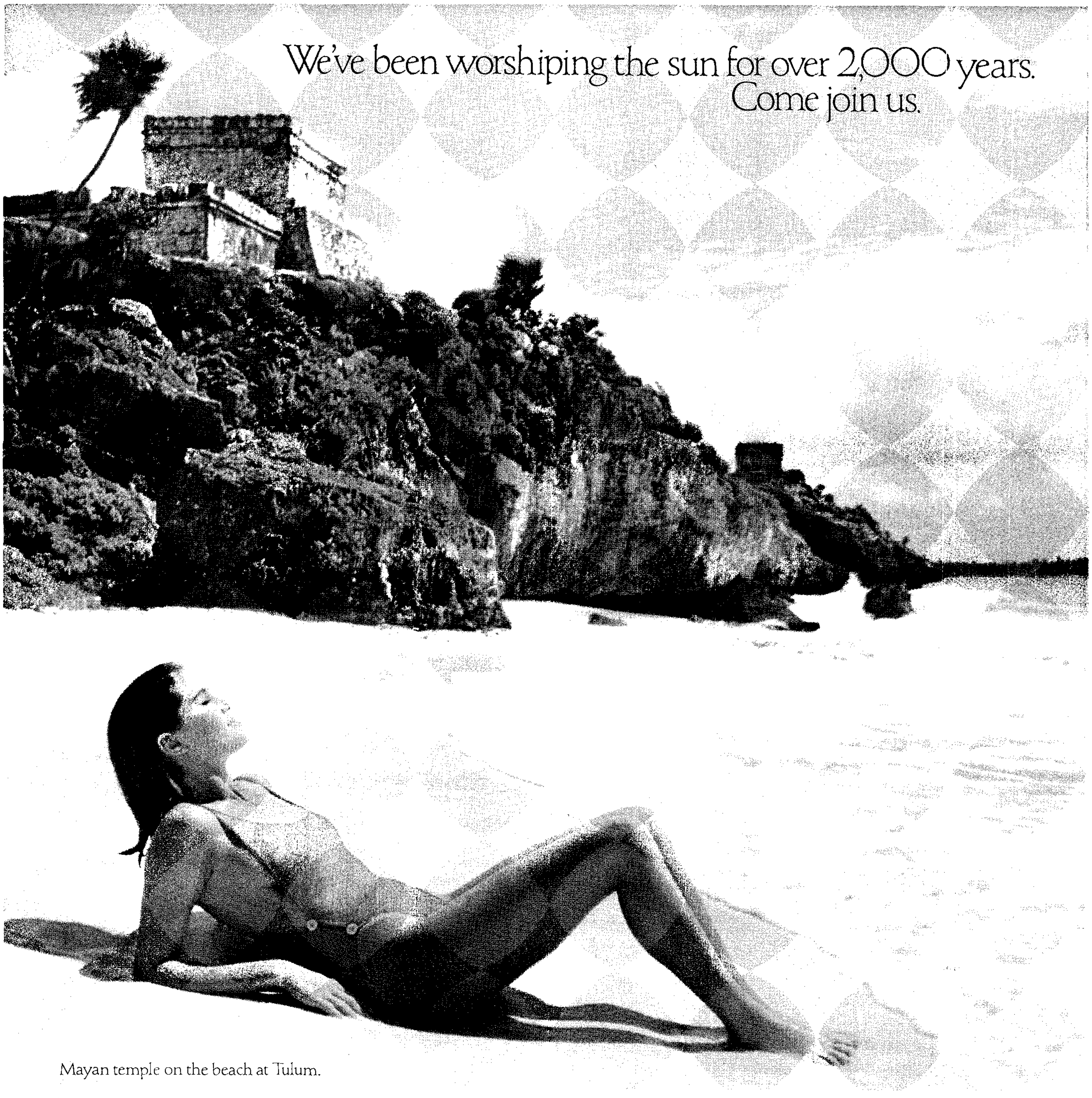
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asbestos, and he gave an interesting reply.

"You take me back a few years, but early in my career with C.J.-M.—in, say, '44 to '47—Metropolitan Life was conducting personnel studies of employees and non-employees in Thetford and, to a lesser degree, in our town," Smith said. "And, walking through the town of Asbestos on a dry August day, you could see little rolls of asbestos fibre rolling along the street like tumbleweed, and you just assumed that anybody walking the streets—the storekeepers or policeman walking his beat, or anybody in the house—would be exposed to that airborne dust. And I can remember rather vividly Dr. Stevenson, as our senior citizen, standing at the edge of our open pit one day—"

"Your open pit being—" Henderson interrupted.

"The asbestos mine," Smith said. "We were standing on the edge of the open pit on the eastern side. The whole town of Asbestos was behind us, and, of course, the winds are constantly from the west, blowing across the mine, across the mill, and into the town. And Stevenson said, 'What a shame that the town wasn't built on that hill over there on the western side of the pit. There would have been no dust in the town.' "

"Who else was present during that statement by Dr. Stevenson?" Henderson asked.

"I believe A. R. Fisher was, as I recall it," Smith answered.

"Who was A. R. Fisher?"

"A. R. Fisher at that time was vice-president, production, for the corporation in New York," Smith said.

"This specific incident occurred, as best you can remember, about when?"

"Oh, sometime between '45 and '49. I remember that rather vividly because I picked up a piece of asbestos fibre from the rock there and was crushing it, and chrysotile fibre—you can take the fibre and crush it with your fingers like this and make a ball of wool out of it, and in so doing I had a spicule enter my finger, and later developed a small tumor there."

Following the deposition, Smith furnished Henderson with the report of an industrial-hygiene survey he had conducted of seven hundred and eight men who worked in dusty areas of the milling operation at Asbestos, where asbestos ore was crushed, dried, separated, packed, and shipped. Smith made the survey in 1948 and sent his report to Johns-Manville's New York headquarters early in 1949. The report said that out of the seven hundred and eight workers only four—all of whom had had four years of exposure or less—had X-rays that showed normal, healthy lungs. On page 3, Smith described his policy toward seven workers who showed signs of early asbestosis. "It must be remembered that although these men have the X-ray evidence of asbestosis, they are working today and definitely are not disabled from asbestosis," he wrote. "They have not been told of this diagnosis for it is felt that as long as the man feels well, is happy at home and at work, and his physical condition remains good, nothing should be said. When he becomes disabled and sick, then the diagnosis should be made and the claim submitted *by* the company. The fibrosis of this disease is irreversible and permanent so that eventually compensation will be paid to each of these men. But as long as the man is not disabled it is felt that he should not be told of his condition so that he can live and work in peace and the company can benefit by his many years of experience. Should the man be told of his condition today there is a very definite possibility that he would become mentally and physically ill, simply through the knowledge that he has asbestosis."

Smith sent this report to A. R. Fisher, who marked it for the attention of Vandiver Brown, the corporate attorney, and J. P. Woodard, who was the director of industrial relations. Six and a half years later, Fisher, who had by then become president of Johns-Manville, delivered a talk entitled "The Economics of Industrial Health" at the twentieth annual meeting of the Industrial Hygiene Foundation of America, which was held at the Mellon Institute, in Pittsburgh. "We in industry realize that as good citizens it is part of our obligation to society to help improve the health of the nation as well as the community," he told his audience. He went on to declare that during the thirty-two years he had been with Johns-Manville he had observed "the increasing interest in and the progress made by our company in the field of occupation health."

As for Dr. Smith, his conscience had apparently not yet begun to bother him. A few days after Fisher's speech, he informed a meeting of industrial-relations managers at Hot Springs, Virginia, of the ethics that should guide company doctors who diagnose disease in employees, as if he had never heard of, let alone written, the memo in which he recommended against telling the Canadian workers who had developed asbestosis about their condition. "Our plant doctors are required by the American Medical Association code of ethics, and also in many areas by civil law, to discuss the results of physical examinations with each employee as if the employee were a private patient," Smith told his listeners. "Should any physical or mental defects be noted, which if left without attention might cause disease or injury, these defects and recommended corrective procedures should be discussed with the employee so that he can take proper precautions to maintain and protect his health."

AS might be expected, Dr. Smith's deposition of January 13, 1976, posed serious problems for Johns-Manville's state-of-the-art defense. Accordingly, Henderson planned to make extensive use of the deposition and also of the documents in Carollo and DeRocco v. Forty-Eight Insulations, which was slated to go to trial in March. The proceedings were postponed, however, when DeRocco fell ill with pneumonia and had to be hospitalized, and the case was ultimately settled out of court for a hundred and fifty thousand dollars. Meanwhile, Henderson had begun to hear of other lawyers who were handling asbestos lawsuits. One of them was an attorney from Knoxville, Tennessee, named Paul T. Gillenwater, of Gillenwater, Whelchel & Roberts, who had been involved in asbestos litigation for nearly a year. Another was Robert E. Sweeney, of Sweeney, Mahon & Vlad, in Cleveland, who was a former congressman-at-large from Ohio and was then general counsel for the Cleveland Building and Construction Trades Council; he had filed an asbestos-product-liability lawsuit in the summer of 1973.

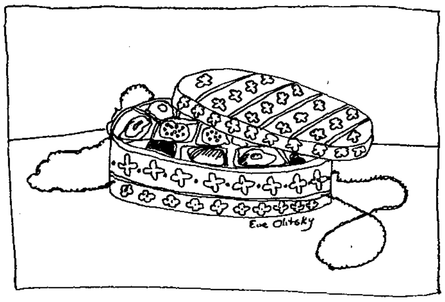
During 1975, Sweeney had arranged several informal discussions between fellow-lawyers who were involved in asbestos litigation, and in the spring of 1976 Gillenwater organized a formal meeting of sixteen attorneys in the field in order to share ideas and discuss tactics. The meeting was held in Atlanta, and among those attending were Gillenwater, Henderson, Sweeney, and Jon L. Gelman, then with Gelman & Gelman, of Paterson, New

Jersey. Gelman & Gelman specialized in workmen's-compensation cases, and was then representing nearly two hundred former workers from a large asbestos-products plant that had been operated by Raybestos-Manhattan, in nearby Passaic, between 1929 and 1973. The Atlanta meeting and subsequent similar meetings proved so beneficial to the participants that in 1978 they founded an organization called the Asbestos Litigation Group, which in the years to come played a tremendously influential role in directing asbestos litigation. At the time of the Atlanta gathering, however, they were groping their way through unfamiliar territory and pooling their discovery resources. One of the participants was Allen Schmitt, from Louisville, Kentucky; he represented the Louisville Trust Company, administrator of the estate of William Virgil Sampson, who had died of mesothelioma in 1972, after spending ten years as an employee of a small fabricating company engaged in making asbestos wallboard and laboratory tabletops. As it happened, Louisville Trust Company v. Johns-Manville Products Corporation was slated to go to trial in Jefferson Circuit Court, in Louisville, within a few weeks, and since Schmitt was going up against Lively Wilson, a leading defense attorney with Stites, McElwain & Fowler, of Louisville, as well as against Dennis Markusson, who was corporate counsel for Johns-Manville, he brought Henderson into the case as co-counsel.

State-court rules of evidence in Kentucky, as in most other states, stipulated that a deposition could not be introduced in evidence unless all the defendants in the case were present at its taking, so Henderson travelled to Windsor on April 21st to depose Dr. Smith for a second time. One of the high points came when he asked Smith whether he had ever formed an opinion that asbestos dust could pose a health hazard to people in the general population. Smith observed that "the good Lord gave us all the same breathing apparatus," and went on to say, "Wherever there is dust and people are breathing dust, they are going to have a potential hazard."

Since Lively Wilson's defense in Louisville Trust v. Johns-Manville was based largely upon the state-of-the-art claim, Smith's testimony that inhaling asbestos was hazardous to anyone, not just asbestos-factory workers, played an extremely important role in the trial, which began late in April of 1976: it enabled Henderson to emphasize Johns-Manville's strict liability in his closing argument to the jury, and the jury awarded ninety thousand dollars to Sampson's estate. This was a major triumph for Henderson, who had not only plunged into the case on short notice but had beaten Lively Wilson, one of the best defense lawyers in the country, in Wilson's home town. The next few months were a heady time for Henderson as offers to associate himself in new cases came pouring in. During the summer and fall of 1976, he participated as co-counsel in several product-liability cases, all of which were settled out of court by the defendant manufacturers, and as the year ended it looked as if he and the other plaintiff attorneys had Johns-Manville and the rest of the asbestos industry on the run. Their euphoria was short-lived, however, because in the autumn of 1976 Dr. Smith declined to give any further depositions, claiming that he needed more time for his private practice. Then, in August of 1977, he died, and a major weapon against the state-of-the-art defense died with him.

Lively Wilson, meanwhile, was improving this defense by placing new and effective emphasis upon a 1946 study of asbestos-insulation workers in military shipyards that had been conducted by Dr. Walter Fleischer and Professor Philip Drinker, of the Harvard School of Public Health; it concluded that asbestos pipe covering was not a hazardous occupation, and two of the defense attorneys had used it in Borel. Moreover, since the whole burden of proof in strict-liability cases rested upon the plaintiff, Henderson and other plaintiff lawyers were faced with the difficult task not only of persuading jurors that the defendant companies had known of the asbestos hazard decades earlier but also of presenting complex medical evidence in a manner that would convince jurors by a preponderance of the evidence that the plaintiffs' illnesses had been caused by their exposure to asbestos. As a result, defense attorneys were able to persuade juries in several cases that came to trial after Louisville Trust v. Johns-Manville that defendant asbestos manufacturers could not have known about the health hazard to insulators before 1964. In some instances—especially in lung-cancer cases where cigarette smoking was involved—they were also able to cast doubt upon whether a plaintiff's disease had developed as a result of his exposure to asbestos. Thus, after the plaintiff lawyers had run up a string of half a dozen victories the defense won three in the early part of 1977 and two more before the end of the year, and by the middle of 1978 the score in asbestos-product-liability lawsuits that had gone to trial stood even, at 8–8. It was now clear to Henderson and other attorneys representing sick asbestos workers that if they were to persuade juries on a regular basis that Johns-Manville and other leading asbestos companies had had early knowledge of asbestos disease and should be held strictly liable for their failure to warn they were going to have to go in search of more ammunition.



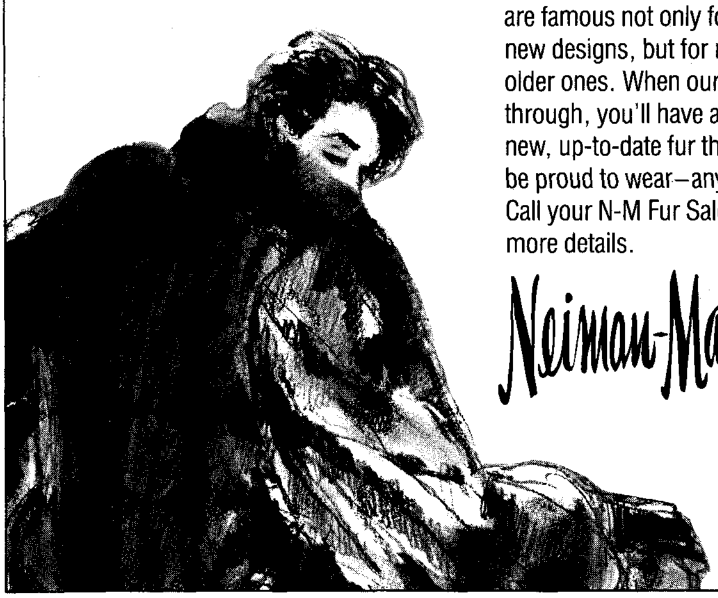
As it happened, some important digging had already begun. Back in April of 1975, an attorney named Karl Asch had been sitting in the living room of his home, in Springfield, New Jersey, reading the 1974 annual report of Raybestos-Manhattan, of Trumbull, Connecticut—a leading manufacturer of asbestos products—when he came across a passage that startled him. A tall, bespectacled, partly bald man in his middle forties, Asch had recently returned to private practice after a five-year stint as prosecutor of Union County. He had graduated from Columbia University in 1951 and, after time in the Army, from the law school there in 1956, and, after joining Asch & Asch, his father's firm, had become a specialist in accident and personal-injury cases and in negligence suits involving industrial explosions, tire failures, food poisoning, defective escalators, and the like. However, he had never handled a case involving occupational disease until, a week or so after he resigned as county prosecutor, Jerome Gelman, Jon Gelman's father, who was representing former employees of Raybestos-Manhattan's Passaic plant in workmen's-compensation actions, asked him if he would be interested in bringing a product-liability lawsuit in their behalf.

During the next few weeks, Asch

prepared himself by studying the Borel and Karjala cases. He also made inquiries about Raybestos-Manhattan, and learned that it had been formed in 1929 by an industrial entrepreneur named Sumner Simpson, of Bridgeport, Connecticut. At that time, Simpson had merged his own company, the Raybestos Company, of Bridgeport, makers of asbestos brake linings and clutch facings, with two other companies: the Manhattan Rubber Manufacturing Company, of Passaic, makers of brake linings and friction products, and the United States Asbestos Company, of Manheim, Pennsylvania, manufacturers of asbestos-textile products. As for the Passaic plant, Asch learned that it had employed up to three thousand men during the Second World War, that a thousand men were working there when it was shut down, in June of 1973, and that very dusty conditions had prevailed during much of the forty-four years it had been operated by Raybestos-Manhattan. He was reading through the company's 1974 annual report in the hope of finding out more about its operations when he came across these paragraphs:

> For many years it has been known that prolonged inhalation of asbestos dust by factory workers could lead to disease. As early as 1930, Raybestos-Manhattan commissioned the Metropolitan Life Insurance Company to survey all its factories and to make recommendations for the elimination of conditions which might present health hazards. Following presentation of the reports and recommendations, extensive long-range engineering programs were instituted at all plants to develop effective dust control systems.
>
> In addition to pioneering in the design of engineering controls, Raybestos-Manhattan joined with other asbestos products manufacturers in the mid-1930's in funding long-range research programs on the biological effects of asbestos.
>
> Because of the long latent period of asbestos-related disease, the disease being found today among some industry employees is a result of conditions existing decades ago when little was known about the health effects of asbestos or proper means of control.

Asch could scarcely believe this self-congratulatory passage. On the one hand, he represented more than two hundred clients, many of them sick and dying, who had never once seen a warning label on any of the bags of raw asbestos they used in the Passaic plant. On the other hand, here was the owner and operator of that very plant admitting in print that not only had it known for nearly fifty years that inhalation of asbestos dust could make these workers sick but it had even



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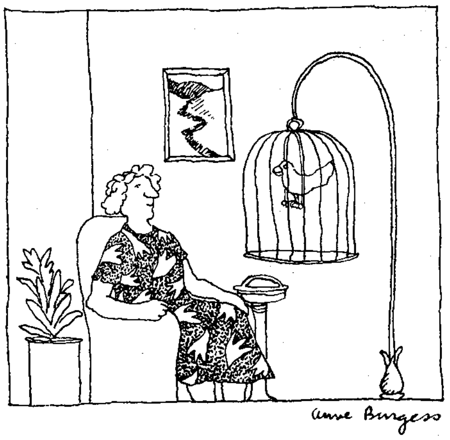
commissioned studies of the problem and undertaken preventive measures. It struck Asch immediately that the health surveys, recommendations, and research programs that were mentioned in the annual report could be of immense value in the product-liability lawsuit he was preparing in behalf of the Passaic workers.

Under New Jersey law, there was a two-year statute of limitations for filing a product-liability lawsuit, and in order to preserve the rights of a number of workers who had instituted workmen's-compensation claims in the late spring of 1973 Asch worked furiously during the latter part of April to draft a complaint. On May 6, 1975, he filed it in Federal District Court for the District of New Jersey in behalf of two hundred and eighty-six former workers, together with the wives or husbands of those workers who were married. Among the defendants were the Johns-Manville Products Corporation; Bell Asbestos Mines, Ltd., of Thetford Mines, Quebec; Asbestos Corporation, Ltd., which was owned by General Dynamics, of St. Louis; Cassiar Asbestos Corporation, Ltd., of Vancouver, British Columbia; the Asbestos Corporation of America; and the Metropolitan Life Insurance Company. The complaint, which was entitled Charles Lee Austin and Edna Austin (his wife) et al. v. Johns-*Manville Products Corporation* et al., charged the mining companies, all of which had sold raw asbestos to Raybestos-Manhattan, with failing to warn workers at the Passaic plant that asbestos could be harmful to their health. It also charged that Metropolitan Life had assumed a duty to provide Raybestos-Manhattan with information and instruction on how to protect the health of these employees but had negligently failed to do so.

Over the next four years, Asch filed additional complaints as more and more of the Passaic workers developed disease, and the complaints were consolidated for purposes of discovery until, by November of 1979, there were six hundred and sixty-eight plaintiffs in the lawsuit. During the rest of 1975, he drew up and sent out the usual interrogatories, and in December he mailed a request for production of documents to Stryker, Tams & Dill, a Newark law firm that represented Metropolitan Life: the carrier was asked to produce copies of all documents and correspondence relating to the surveys of the health conditions in Raybestos-Manhattan's various plants and facilities which it had performed during the early nineteen-thirties. In its initial response, Metropolitan Life claimed that it couldn't find the papers in question. Asch then brought a motion to compel further production in specific areas, and toward the end of 1976 the insurance company finally released a report of some surveys that had been performed for Raybestos-Manhattan in the early nineteen-thirties by Dr. Anthony J. Lanza, who had been the assistant director of its medical department. Asch was still not satisfied, because Metropolitan Life had not included any correspondence between it and Raybestos, so he decided to go at the problem from another angle. In February of 1977, he obtained a subpoena duces tecum ordering William S. Simpson, who was a son of Sumner Simpson and the chief executive officer of Raybestos-Manhattan, to give testimony at a deposition, and to bring with him all documents pertaining to working conditions at the Passaic plant, health histories and insurance records of the workers who had been employed there since 1920, and medical records concerning any workmen's-compensation claims for occupational-health problems.

IN the year and a half that had passed since his initial request for production of documents, Asch had come to suspect that there had been a coverup concerning early knowledge of asbestos disease, but he did not anticipate finding hard proof of it. "When I arrived at Raybestos-Manhattan's headquarters in Trumbull, Connecticut, on the morning of April 12th I didn't expect to get a lot of incriminating evidence," he recalled recently. "It was a beautiful spring day, full of sunshine and soft breezes. The headquarters building sat on a grassy knoll surrounded by tall trees, and Simpson's office was sumptuous. In addition to myself, a number of prominent defense lawyers were on hand. As for William Simpson, he was a silver-haired, well-tailored man of sixty, who had been president of Raybestos-Manhattan since 1967, and chief executive officer as well as chairman of the board since 1974. The deposition started out routinely. Simpson testified that after graduating from Williams College, in 1939, he went to work as a trainee in the advertising department of Raybestos-Manhattan's Stratford plant, and that in 1953, the year his father died, he became general manager of the factory. He said that he had first visited the Passaic plant in the early nineteen-forties, that he had made many subsequent visits over the next thirty years, and that he had never noticed any unusually dusty conditions there."



After lunch, which was served in the corporate cafeteria, Asch asked Simpson whether Raybestos had ever retained any independent consultants to assist it with regard to plant safety and health, and whether it had ever obtained information on asbestos disease from its insurance company. This was a key question, of course, and after conferring with his attorneys Simpson acknowledged that Dr. Leroy U. Gardner, the director of the Trudeau Foundation's Saranac Laboratory, had been retained to perform animal studies, and that studies of plant safety and health had been performed by the Metropolitan Life Insurance Company. When Asch asked where the records of these studies were kept, he was told by attorneys for Raybestos-Manhattan that a carton containing the personal papers of Sumner Simpson was in a nearby room, and that these papers included reports of the studies that Metropolitan Life had performed for Raybestos. Asch then resumed his questioning of William Simpson, who admitted that he had examined the file and read the Metropolitan Life reports during the early nineteen-forties. After his father's death, he said, the carton had been stored in the vault at the company's headquarters in Stratford. According to Simpson, it contained "personal documents, as I understand them, relating to my father's early work with asbestos."

Five years earlier, Johns-Manville had moved its corporate headquarters from New York City to Denver, and during the process had apparently discarded or misplaced the correspondence that had passed between its officials and Sumner Simpson. One can only imagine how the news was greeted in Denver that this correspondence was intact at Raybestos-Manhattan and had been placed in the hands of a plaintiff attorney. As for Asch, who spent the next several days reviewing Simpson's papers, he was elated.

"I realized that I had hit pay dirt," he recalls. "Even a quick run-through of the papers told me that neither Johns-Manville nor Raybestos-Manhattan—two of the largest asbestos companies in the United States—would ever again be able to claim with any validity that they had not known about the hazards of asbestos. I was also struck by the stark contrast between what high officials of these two giant companies had known about asbestos disease more than forty years ago and the ignorance of those facts on the part of the men who had worked for them and who were now my clients. As for the defense lawyers, who were sifting through the same papers, they were all capable counsel who could not have helped realizing the profound legal significance of what they were reading. At the time, they made no comment. Later, however, some of them referred to Sumner Simpson as an old pack rat for having tucked away all those incriminating documents. My guess is that Simpson was an ambitious and intelligent man who realized early that the growing knowledge of asbestos disease posed a serious threat to his corporate empire, and who set out to neutralize that threat. As for his son William, my impression of him was that he respected his father deeply, and wouldn't have dreamed of destroying any of his records, which have become universally known among asbestos litigators as the Sumner Simpson papers. Whatever you want to call them, they are collectively a smoking gun."

AMONG the earliest of the documents in the Sumner Simpson file are the minutes of a meeting that was held on November 28, 1933, in the office of W. R. Seigle, chairman of the board of Johns-Manville, at the company's headquarters, at 22 East Fortieth Street, in Manhattan. The meeting had been called to discuss Simpson's suggestion that joint action be taken to standardize methods of dust control in asbestos factories, and among those attending it were Seigle; E. M. Voorhees, the secretary of Johns-Manville; Vandiver Brown, the

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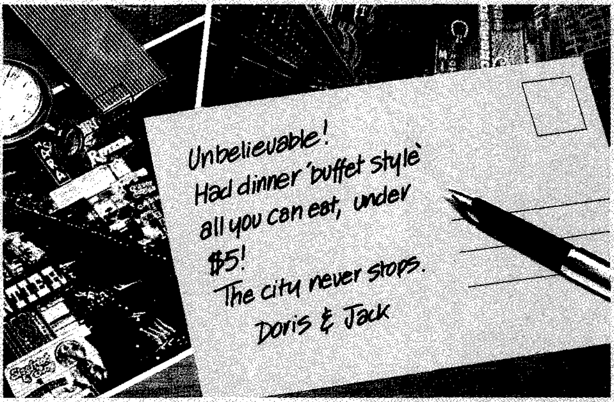

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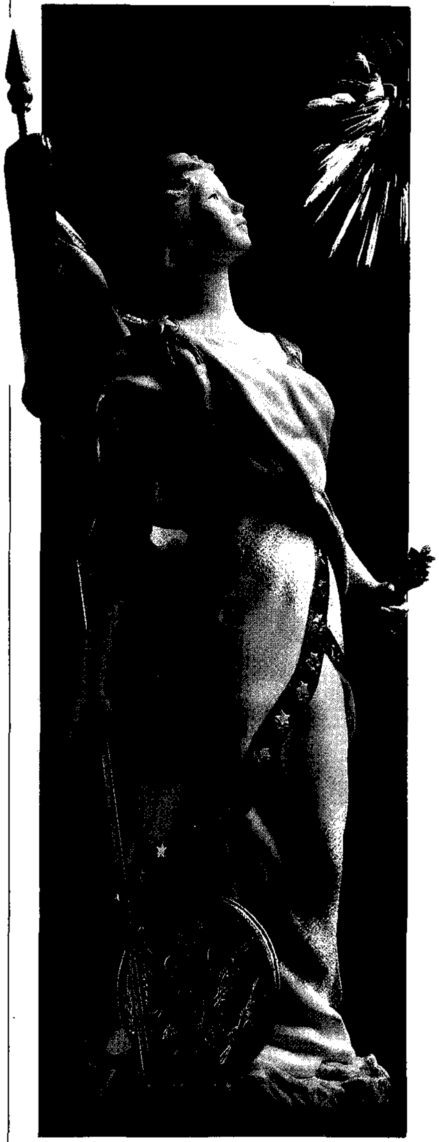

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head of the company's legal department; and Dr. Anthony Lanza, who had undertaken health surveys of the asbestos industry several years earlier, and who wanted to reëxamine certain workers to whom he had given chest X-rays at that time. Some idea of what the Johns-Manville people had in mind came in the final paragraph of the minutes. It read, in part:

> Mr. Voorhees asked Dr. Lanza if he thought the Metropolitan Life Insurance Company would be willing to make dust counts at the various plants once or twice a year at such places and under such conditions as they might see fit for the purpose of determining progress made in improving dust conditions, Mr. Voorhees' idea being that unbiased reports of this character would be helpful to us, if favorable, in the event we should ever be involved in litigation.

On December 29, 1933, another meeting was held in Seigle's office. It was attended by Seigle, Voorhees, and Brown and also by Sumner Simpson, and the four agreed to allow Metropolitan Life to bring its survey up to date. The minutes of the meeting said, "While it may be desirable because of changing conditions to publish the first report of the Metropolitan Life Insurance Co., our past policy of keeping this matter confidential is to be pursued and the question of publicity deferred until such time as the second report is available for our analysis."

Metropolitan Life's first report, written in 1931, was entitled "Effects of the Inhalation of Asbestos Dust Upon the Lungs of Asbestos Workers." Its authors—Dr. Lanza and two colleagues—declared in their introduction, "In 1929, the Metropolitan Life Insurance Company was approached by firms representing the asbestos industry in the United States with the request that a hygienic study be made of that industry." They went on to say that "officials representing these firms were desirous of ascertaining if asbestos dust was an occupational hazard in their establishments and, if so, what was the nature of this hazard and what should be done to prevent or control it." Lanza and his associates observed that while one or two isolated cases of asbestosis had been reported in American journals "the industry itself appeared to be quite uninformed of the existence of any such occupational disease."

Whatever their ignorance in 1929, officials of Johns-Manville and Raybestos-Manhattan did not long remain uninformed about the hazard of asbestos. Between October of 1929 and January of 1931, Dr. Lanza and his colleagues not only measured dust levels in several of the companies' textile plants and found them high but also took chest X-rays of a hundred and twenty-six workers employed in the industry for more than three years and found that no fewer than sixty-seven of them had already developed asbestosis and thirty-nine showed some signs of it. Lanza and his colleagues concluded that "prolonged exposure to asbestos dust causes a pulmonary fibrosis of a definite type distinct from silicosis demonstrable on X-ray films," and that "clinically, it is of a type milder than silicosis." They warned that while the cases of asbestosis they had observed had not resulted in marked disability "it is possible for uncomplicated asbestosis to result fatally." And they ended their report by recommending that Johns-Manville, Raybestos-Manhattan, and their fellow asbestos manufacturers "seriously face the problem of dust control in asbestos plants," and that employees of these factories be given periodic physical examinations and chest X-rays.

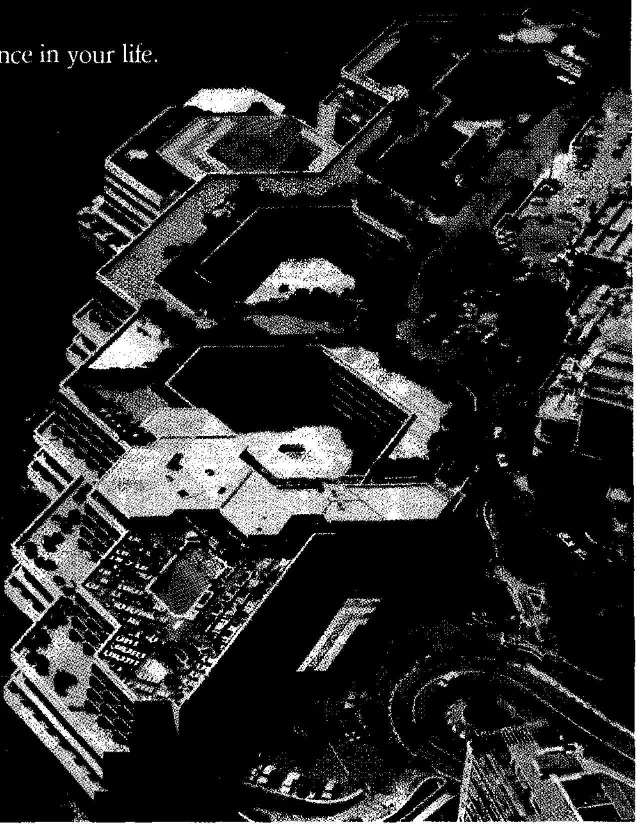
Johns-Manville and Raybestos-Manhattan had been in possession of this report for more than two years when Vandiver Brown wrote Lanza a letter acknowledging receipt of galley-proof sheets that Lanza had submitted for publication in a United States Public Health Service Report. In his letter, which was dated December 10, 1934, Brown asked Lanza to reinstate two observations that had been deleted from the original version of the report—one was the suggestion that asbestosis appeared to be a milder lung disease than silicosis—saying that both observations "presented an aspect of your survey that was favorable to the industry and we should like to see them retained." Brown also informed Lanza that he was planning to transmit the galley proofs to George S. Hobart, of the law firm of Hobart & Minard, of Newark, and would send Hobart's editorial comments to Lanza.

As it happened, twenty months earlier Hobart had helped advise Johns-Manville on how to get out of a ticklish situation involving negligence suits that had been brought by employees who had developed asbestosis while working at the company's factory in Manville, New Jersey. His advice concurred with that of attorneys at Davis, Polk, Wardwell, Gardiner & Reed, a New York City firm, which handles Manville legal affairs to this day. The minutes of a Johns-Manville board of directors meeting held on April 24, 1933, spelled out the details:

> The President advised the meeting that Messrs. Hobart & Minard of Newark had been approached by the attorney for the plaintiffs in the eleven pending "asbestosis" cases with an offer to settle all the cases upon a much lower basis than had ever been previously discussed. He further stated that our general counsel, Messrs. Davis Polk Wardwell Gardiner & Reed, as well as Messrs. Hobart & Minard, had recommended that we settle for approximately $30,000 provided written assurance were obtained from the attorney for the various plaintiffs that he would not directly or indirectly participate in the bringing of new actions against the Corporation.

Hobart sent his editorial comments on Lanza's article to Brown by letter on December 15, 1934. After telling him that he had compared Lanza's proof with Metropolitan Life's original report, Hobart said that he did not want Lanza's report to "suggest that asbestosis might be assumed to be 'similar' to silicosis," and that "it would be very helpful to have an official report to show that there is a substantial difference between asbestosis and silicosis." He also described a version of the state-of-the-art defense similar to the one that Johns-Manville would raise when Ward Stephenson finally cornered it, almost forty years later, in the federal district court in Beaumont, Texas. "It is only within a comparatively recent time that asbestosis has been recognized by the medical and scientific professions as a disease," Hobart wrote, and, "One of our principal defenses in actions against the company on the common law theory of negligence has been that the scientific and medical knowledge has been insufficient until a very recent period to place upon the owners of plants or factories the burden or duty of taking special precautions against the possible onset of the disease to their employees."

On December 21, 1934, Brown sent Hobart's editorial suggestions to Lanza with a plea for consideration. "I am sure that you understand fully that no one in our organization is suggesting for a moment that you alter by one jot or tittle any scientific facts or inevitable conclusions revealed or justified by your preliminary survey," he wrote. "All we ask is that all of the favorable aspects of the survey be included and that none of the unfavorable be unintentionally pictured in darker tones than the circumstances justify. I feel confident we can depend upon you . . . to give us this 'break'



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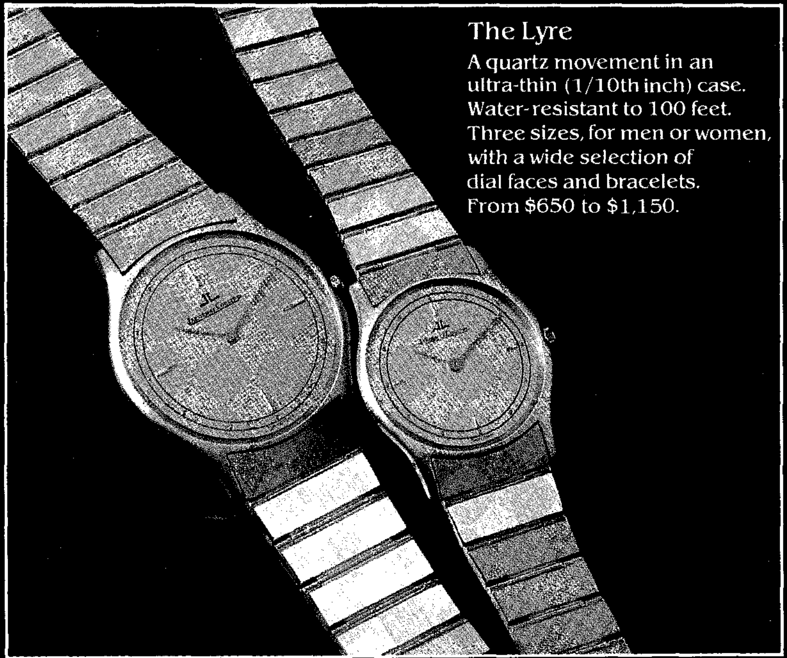

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and mine and Mr. Hobart's suggestions are presented in this spirit."

WHEN the United States Public Health Service published the Metropolitan Life study, on January 4, 1935, it was apparent that Dr. Lanza had accepted many of Hobart's editorial suggestions. By that time, Lanza had become a leading figure in the field of occupational medicine. Born in New York City, he had received his medical degree from George Washington University in 1906 and had then joined the Public Health Service. In 1914 and 1915, he helped to direct a study of silicosis among the lead and zinc miners of Missouri, and in 1926 he went to work for Metropolitan Life. In 1935, he discussed his survey of asbestos mines and asbestos-textile mills before the eighty-sixth annual session of the American Medical Association, in Atlantic City, and took pains to point out that "the clinical picture of asbestosis was milder than that of silicosis." He also predicted that "asbestos plants are being cleaned up and the dust is being controlled."

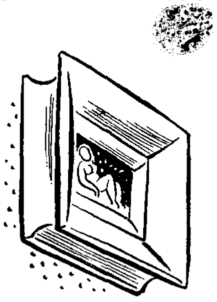
Lanza later wrote a revealing chapter on pulmonary dust disease for a book entitled "Silicosis and Asbestosis," which was published in 1938 by the Oxford University Press. "Silicosis and asbestosis burst upon the amazed consciousness of American industry during the period 1929-1930," he stated at the outset. He went on, "Arising out of the period of economic depression, the situation with respect to silicosis and asbestosis became manifest as a medicolegal phenomenon of a scope and intensity that was at once preposterous and almost unbelievable," and added that "damage suits, under the common law, were instituted against employers by employees, alleging pulmonary dust diseases, in industrial centers all over the United States, to an amount in excess of 100,000,000 dollars." After describing how this situation led to the modification of existing compensation laws to include pulmonary dust diseases, Lanza declared that the harsh restrictions that were built into them—for example, a limit of three thousand dollars for permanent disability or death in New York State and a limit of thirty-six hundred dollars in Pennsylvania—reflected not "a desire to deprive working men of their just dues but a feeling that it was necessary to place a drastic check on the expected avalanche of silicotic claims." He went on to explain that the damage suits “confused and terrified industrialists and insurance officials,” and inspired “dread” among them. Lanza was undoubtedly speaking with authority, because during this period he was helping Johns-Manville and Raybestos-Manhattan defend against claims for damages that were being brought against them by employees afflicted with asbestosis. After the Second World War, he left Metropolitan Life to become professor of industrial medicine at New York University Medical Center, and shortly before his death, in 1964 at the age of eighty, the university renamed its laboratories at Sterling Forest the Anthony J. Lanza Research Laboratories for Environmental Medicine.

On September 25, 1935, Miss A. S. Rossiter, the editor of an industry trade magazine, *ASBESTOS*, which was published in Philadelphia, wrote a letter to Sumner Simpson. It began:

> DEAR SIR:
>
> You may recall that we have written you on several occasions concerning the publishing of information, or discussion of, asbestosis and the work which has been, and is being done, to eliminate or at least reduce it.
>
> Always, you have requested that for certain obvious reasons we publish nothing, and, naturally, your wishes have been respected.
>
> Possibly by this time, however, the reasons for your objection to publicity on this subject have been eliminated, and if so, we would like very much to review the whole matter in *ASBESTOS*.

On October 1st, Simpson sent a copy of Miss Rossiter’s letter to Vandiver Brown, along with some thoughts of his own on the matter. “As I see it personally, we would be just as well off to say nothing about it until our survey is complete,” Simpson wrote. “I think the less said about asbestos, the better off we are, but at the same time, we cannot lose track of the fact that there have been a number of articles on asbestos dust control and asbestosis in the British trade magazines. The magazine *ASBESTOS* is in business to publish articles affecting the trade and they have been very decent about not re-printing the English articles.”

Two days later, Brown wrote in reply to Simpson’s suggestions, “I quite agree with you that our interests are best served by having asbestosis receive the minimum of publicity.” Miss Rossiter was obviously persuaded to continue to be “decent” about the matter, for in the early spring of 1939 she wrote Simpson that she understood that all information on asbestosis was to be kept confidential and “nothing should be published about asbestosis in *ASBESTOS* at present.” Apparently, she continued to be troubled by the subject, however, for in June of 1943 she sent Simpson a copy of a letter that had been written by a man named Elliott DeForest, who was the secretary of an insulation-industry trade organization in Seattle, to the supervisor of safety for the Washington State Department of Labor and Industries. DeForest was protesting the promulgation of a new safety standard for asbestos-containing products, which had occurred because of reports from England that asbestos could cause asbestosis. “We feel that if such a so-called disease were advertised to the general public, and our workmen in particular, that it would give them an excuse upon which to place claims for all sorts of allied ailments and our particular industry would be unduly burdened by such parasites,” DeForest wrote. He went on to say that “this foreign disease . . . should be left in Europe where it belongs and not brought to our local communities and create hysteria and fear amongst the families of our contented workmen who are now enjoying good health and living to a ripe old age.”



In her covering letter to Simpson, Miss Rossiter suggested that “perhaps you might like to contact Mr. DeForest on the subject.” Simpson forwarded the letters to Brown, who wrote back within a few days to let Simpson know what he thought about the matter. “I am inclined to let Mr. DeForest learn the facts of life and asbestosis from the State of Washington Department of Labor and Industries,” he said.

IT was one thing, of course, for the two giants of the asbestos industry to censor the contents of an industry trade journal and quite another for them to deal with the growing number of negligence lawsuits that were being brought in the mid-nineteen-thirties as more and more American workers developed asbestosis. Some idea of how worrisome this litigation was can be seen in a letter that Simpson wrote on October 19, 1935, to Dr. William J. McConnell, who had become the director of Metropolitan Life’s industrial-health section. In the letter, Simpson complained bitterly about a recent decision by Metropolitan Life not to allow one of its officials to testify for Raybestos in some asbestosis lawsuits that had been brought by workers at the company’s textile plant in North Charleston, South Carolina. He told McConnell that he had been led to believe that “we would have your assistance in trying these unfair suits, which would eventually be a benefit to you, and also have considerable bearing on the Dust racket, about which so much has been published lately,” and he threatened to take the matter up with the president of Metropolitan Life.

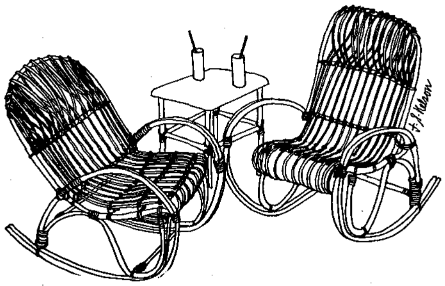
McConnell wrote back a few days later to assure Simpson that “arrangements had been made to assist your company in the present litigation,” but the public furor over the Gauley Bridge tunnel disaster, which erupted during the winter of 1936, encouraged the bringing of more lawsuits, and by the autumn of that year Simpson was writing letter after letter in a desperate attempt to control a situation that he obviously feared was getting out of hand. Some idea of his mood can be gained from a letter he wrote to E. H. Jeffords, the general manager of Raybestos-Manhattan’s plant in North Charleston, South Carolina, on November 5, 1936, concerning a request by Dr. Lanza that the United States Public Health Service be allowed to take chest X-rays of employees at the plant in connection with a health survey of asbestos-textile factories. Simpson told Jeffords that “you may advise the Public Health Service that they may take the pictures, with the understanding that they are not available for any purpose whatever except public health information, and you want to stress the fact that we do not want them given to shyster lawyers and doctors so as to be the subject of suits, for, as you know, we have had enough adjustments for any one company.”

On November 20, 1936, Vandiver Brown wrote to Dr. Leroy Gardner, the director of the Saranac Laboratory, informing him that he and Simpson had interested eight or ten asbestos-products manufacturers in financing his animal experiments on asbestosis for a three-year period at a cost of five thousand dollars a year. Brown told Gardner that “the results obtained will be considered the property of those who are advancing the required funds, who will determine whether, to what extent and in what manner they shall be made public,” and added, “In the event it is deemed desirable that the results be made public, the manuscript of your study will be submitted to us for approval prior to publication." On November 23rd, Gardner sent Brown a letter saying, "The Saranac Laboratory agrees that the results of these studies shall become the property of the contributors and that the manuscripts of any reports shall be submitted for approval of the contributors before publication." Over the next decade, Dr. Gardner honored the bargain of silence he had entered into, but apparently with some misgivings, for not long before he died, in October of 1946, he sorrowfully told Dr. Harriet Hardy that because of an agreement he had signed with Johns-Manville he was unable to publish the findings of his experiments, even though many of the test animals that he was exposing to asbestos dust were suffering from pulmonary dust disease.

Back in the tense autumn of 1936, two weeks after Gardner made his pact with Brown, Simpson received a letter from George S. Fabel, the president of the Southern Asbestos Company, of Charlotte, North Carolina, telling him about a number of asbestosis lawsuits that had been brought against his company. Fabel's reaction to publicity about asbestosis was even stronger than Simpson's, as can be seen in a letter he had written to the editor of the Philadelphia *Record* about what he thought of an article that had appeared in the newspaper in August of 1935; the article, which was written by John L. Spivak, had described the suffering of workers in asbestos mills in the South. Fabel declared that Spivak's piece was "unconfirmed dramatized tommyrot," and that its "tear-jerking" style made him furious. He went on to say that competent doctors testifying in court trials and insurance examinations had not substantiated Spivak's claim that people working in textile mills had been known to contract asbestosis within eighteen months.

Spivak replied to Fabel's charges in a letter to the editor which was published in an adjacent column. "Obviously, if such testimony was given at court trials, then persons suffering from asbestosis were seeking compensation which had been denied them, for injuries they claimed resulted from their work," he wrote. "It is to be regretted that Mr. Fabel did not see fit to tell for which side the competent doctors he mentions gave their testimony. Were they not doctors paid by the asbestos mill to defend the claims against it?" Spivak pointed out that insurance companies had known about the asbestos hazard for many years. As evidence of this, he cited a paper on working conditions in asbestos-textile mills that had been delivered by officials of the Penn Mutual Life Insurance Company, of Philadelphia, at an intercompany occupational-rating conference held at the home office of the John Hancock Mutual Life Insurance Company, in Boston, in May of 1928. After quoting from three reports on pulmonary asbestosis among asbestos-textile workers that had appeared in the *British Medical Journal*, the Penn Mutual officials advised their colleagues that "until we have the benefit of our experience with this class of workers, we should continue to look upon those who may be exposed to large quantities of dust . . . as risks to be selected with great care and only at an extra premium that will provide for an estimated extra mortality of 50 per cent, disability not to be granted."

Thus did the officials of leading life-insurance companies consider, in 1928, how to protect their profits on the estimated early death of asbestos-textile workers. A year later, the Metropolitan Life Insurance Company, the nation's largest life-insurance carrier, undertook its survey of health conditions in asbestos-textile mills, which showed that a serious health hazard existed in these factories—a finding that did not deter Metropolitan Life from allowing Johns-Manville attorneys to edit and partially water down the report of the survey prior to its belated publication, in 1935. By then, of course, the Depression was in full swing, and the attention of most Americans was on the need for jobs, not on job health. Within a few years, the nation's attention would be almost totally absorbed by the war effort and the economic boom that accompanied it. By 1942, owing largely to these circumstances and to the efforts of Simpson and Brown to keep knowledge of the asbestos hazard from being made public—efforts that were not hindered by any of the insurance companies in the United States—the first asbestos-litigation crisis had disappeared. Many states had already amended their workmen's-compensation statutes to take away the right of workers afflicted with asbestosis to bring suit against their employers under the common law. As a result, during the late nineteen-thirties and early nineteen-forties, Raybestos-Manhattan and its workmen's-compensation insurance carriers were able to settle dozens of asbestosis claims at an average of only a few thousand dollars apiece. Meanwhile, public concern over the plight of asbestos-factory workers had dwindled, and in spite of warnings from a few pioneer scientists the vast majority of the members of the medical profession chose, through apathy, to look the other way. Millions of unsuspecting American workers—four and a half million men and women in the wartime shipyards alone—were left to undergo exposure to dangerously high levels of asbestos dust as they applied insulation products from Johns-Manville, Raybestos-Manhattan, and other asbestos manufacturers to high-temperature pipes in the holds of vessels, and to pipes and boilers in power plants, oil refineries, and other installations, or as they worked at trades in close proximity to such operations. Because of the long latent period for the development of asbestos disease, and the laborious turning of the wheels of justice, the whole ghastly story now began all over again, as if it were the replay of a disaster film whose reel had been rewound and started up in slow motion. Twenty years passed before Claude Tomplait sought the help of Ward Stephenson. Thirty years passed before Stephenson won the landmark decision in Borel. And not for forty years did the Johns-Manville Corporation—by then it was called the Manville Corporation—feel compelled to file for protection under Chapter 11 of the federal Bankruptcy Code in order to stay the sixteen thousand five hundred claims brought against it by workers who had needlessly sickened or died as a result of exposure to its products, and to avoid standing trial in the tens upon tens of thousands of similar lawsuits that could be expected in the future.



As things turned out, Karl Asch never got a chance to introduce Sumner Simpson's papers in evidence in Austin v. Johns-Manville, because the case was settled out of court early

in 1981 for fifteen and a half million dollars. By then, Metropolitan Life had been dismissed as a defendant in two hundred and sixty-eight of the cases, on the ground that the plaintiffs had failed to provide responsive answers to its interrogatories, and the presiding judge had ordered the remaining cases to be tried four at a time. At that point, Stanley Levy, a trial specialist experienced in handling multi-plaintiff litigation, who was with the New York City firm of Kreindler & Kreindler and was handling some two hundred lawsuits that had been brought against Johns-Manville and other asbestos manufacturers by workers engaged in building nuclear submarines at the Electric Boat Division of the General Dynamics Corporation, in Groton, Connecticut, had been brought into the case as co-counsel. Under the terms of the agreement, the fifteen and a half million dollars was placed in an interest-bearing account, and two retired state-court judges, who were appointed as special masters by Judge Harold A. Ackerman, who was presiding over Austin v. Johns-Manville in federal district court, spent the next six months reviewing the cases of the six hundred and eighty-three plaintiffs who had by then brought suit, and evaluating what each of them would be worth if it had come to trial. This was an immensely complicated undertaking, requiring the special masters to assess each plaintiff's medical record and his or her financial and family history, and it is to their great credit that when they finished their task only three of the six hundred and eighty-three plaintiffs objected to the share they had been allotted. By that time, because of the accrued interest, the pot amounted to some eighteen million dollars. After Gelman, Asch, and Levy received their one-third contingent fees, this sum was reduced to about twelve million dollars, and the twelve million was allotted to the six hundred and eighty-three plaintiffs in payments that ranged from twelve hundred and fifty dollars to more than two hundred thousand.

In addition, most of the Passaic workers had been awarded compensation for asbestosis by the New Jersey Department of Labor's Division of Workers' Compensation, but Raybestos-Manhattan proceeded to enforce a provision of a "sweetheart" contract that had previously been negotiated by the workers' union representatives, which provided for reducing a retiree's pension benefits by an amount equal to any workmen's-compensation award he was eligible for. One of the employees brought suit in New Jersey state court challenging the validity of this pension-offset provision, and when the suit was removed to federal district court the judge held that it was invalid. The Court of Appeals for the Third Circuit reversed this decision, however, and in May of 1981 the United States Supreme Court unanimously upheld the appeals-court ruling, declaring that the state law could not supersede federal law, which permits offsets of pension benefits by workmen's-compensation awards. As a result, Raybestos-Manhattan, which was self-insured at the time, was able to pay very little workmen's compensation for the irreversible lung disease afflicting workers who had toiled in the company's Passaic factory. Moreover, Raybestos went into court and filed a lien on the fifteen-and-a-half-million-dollar settlement in Austin v. Johns-Manville, claiming that it was entitled to additional reimbursement under a provision of the New Jersey Workers' Compensation Act which stated that, in the event that an injured employee received from a third party or his insurance carrier an amount equivalent to or greater than the liability of the employer or his carrier, the employer or his insurance carrier should be released from liability and reimbursed. Some of the beleaguered Passaic workers, represented by Jon Gelman, challenged Raybestos-Manhattan's position before Judge Ackerman. In September of 1982, a magistrate appointed by Ackerman recommended that the company be reimbursed only once—either as a pension-benefit offset or as a lien—and referred the matter to the New Jersey Division of Workers' Compensation. Before the issue could be litigated, however, Raybestos settled out of court to the advantage of the plaintiffs.

Thus ended the legal saga of the Passaic asbestos workers. Their plight and their bleak future have probably been forgotten by most of their fellow-citizens in Passaic and the surrounding communities. Yet they and other factory workers were engaged in manufacturing products, such as brake linings, insulation, and acoustical-ceiling tiles, that, because they were sold and used throughout the land—acoustical-

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ceiling tiles found their way into thousands of school buildings—have become a source of continuing exposure to asbestos for the general population. It is ironic but not surprising, therefore, that in January of 1983 Gelman's seven-year-old son, Michael, brought home a snowman he had fashioned in his first-grade class at the Lafayette elementary school, in Wayne, from a product called Fibro-Clay—a modelling compound manufactured by the Milton Bradley Company between 1967 and 1975—which consisted of a white powder that made a claylike substance when it was mixed with water. Suspicious because the snowman kept flaking into fibres, Gelman sent a sample of the substance to Dr. Selikoff at Mount Sinai, who, after having it tested, informed Gelman that it contained approximately fifty per cent asbestos in a highly respirable form. A subsequent check determined that Fibro-Clay had been used in the Lafayette school for seven years and had also been used in schools in Passaic, Passaic Valley, Prospect Park, East Rutherford, Oakland, New Milford, and Paramus. No one knows the extent of the potential health hazard that has been encountered by the hundreds of children who used the compound in classrooms in this area alone, but Dr. Selikoff believes that the risk could be significant, because, as he puts it, "asbestos fibres, once inhaled, remain in the lungs for life, and even relatively brief exposure to the mineral can cause lung disease twenty to thirty years down the road." As for exposure to asbestos in schools nationwide, the Environmental Protection Agency has estimated that as many as fifteen million students may be attending schools with ceiling panels containing asbestos and with other exposed asbestos surfaces, and that a million two hundred thousand teachers and other school employees may also be undergoing daily exposure to the mineral.

WHILE Karl Asch was unearthing the Sumner Simpson papers in the spring of 1977, Gene Locks, of Greitzer & Locks, in Philadelphia, representing about five hundred asbestos insulators from the Norfolk Naval Shipyard, the Newport News Shipbuilding & Dry Dock Company, and the Philadelphia Naval Shipyard, was also working hard to pry loose evidence of early knowledge by asbestos manufacturers that their products were harmful. A heavyset, aggressive lawyer of forty, Locks had received his law degree from the Columbia University School of Law in 1962 and had started a personal-injury and workmen's-compensation practice in Philadelphia. In 1976, he was engaged in pretrial discovery in an asbestos case when he learned that several of the leading manufacturers of asbestos insulation had been members of the Asbestos Textile Institute—a trade association that had been formed in 1944. Upon subpoenaing the records of the institute's meetings, which were stored at its headquarters, in nearby Willow Grove, Locks came into possession of some papers that have come to be known as the A.T.I. minutes. They furnished compelling evidence of early knowledge of the asbestos-disease hazard on the part of the institute's members, who in 1946 included Johns-Manville; Raybestos-Manhattan; the Union Asbestos & Rubber Company; the Carolina Asbestos Company, of Davidson, North Carolina; the Philadelphia Asbestos Company, of Philadelphia; the Keasbey & Mattison Company, of Ambler, Pennsylvania; and the Southern Asbestos Company, which was regularly represented at the meetings by its president, George S. Fabel.

Early A.T.I. minutes describe a meeting in September of 1946 at which members of the institute's dust-control committee agreed that arrangements should be made for the Industrial Hygiene Foundation of America to conduct a survey of dust conditions in asbestos-textile plants. In June of 1947, W. C. L. Hemeon, the foundation's chief engineer, presented the findings of a preliminary survey he had conducted in these factories, and recommended that a program for dust control and medical surveillance be inaugurated. By June of 1948, however, the members of the institute's air-hygiene committee—a new name for the dust-control committee—were entertaining second thoughts about the wisdom of carrying out Hemeon's recommendations, and the program he had urged upon them was put permanently on the shelf. The actual report of Hemeon's survey turned up in the summer of 1978, and was regarded by many attorneys as one of the most incriminating documents ever found in the asbestos litigation.

In April of 1949, A.T.I. members who met in Chicago discussed an article published in *Scientific American* which they felt "unjustifiably incriminated asbestos as a carcinogenic material." By October of 1952, the members of the air-hygiene committee were warning that "the suspect relation of asbestos to cancer is a matter receiving the attention of Compensation Commissions and is of great importance to Institute members." Two years later, physicians employed by the member companies—among them Dr. Smith, the medical director of Johns-Manville—were told by Dr. Gerrit W. H. Schepers, the medical director of the Saranac Laboratory, that the West German government had recognized asbestos as a cause of lung cancer, and that a recent British study had shown the incidence of lung cancer in workers with asbestosis to be ten times that of lung cancer in workers who had developed silicosis. According to the minutes of this meeting, Schepers "suggested that particles of asbestos be inserted in animal lungs in order that research be done on this problem"—cancer and asbestosis—"so that facts may be determined to combat unjust compensation claims."

At a meeting held in March of 1955, the members of the air-hygiene committee decided to delay a decision on Schepers' proposed study until an additional proposal could be obtained from another research agency. Six months later, Ivan Sabourin, general counsel for the Quebec Asbestos Mining Association, or Q.A.M.A., of which Johns-Manville was a leading member, warned them that the relationship of cancer to asbestos exposure posed a major health problem for the asbestos industry. In March of 1956, the members of the committee were addressed by Dr. Smith, who was disturbed by the fact that a referee of the Pennsylvania State Compensation Board had just issued a finding of "Asbestosis-Cancer" in a workmen's-compensation case. In doing so, the referee had quoted from a report written by Dr. Wilhelm C. Hueper, chief of the environmental-cancer section at the National Cancer Institute, who had declared not only that all workers in the asbestos industry were susceptible to developing asbestosis-cancer but also that the disease might be discov-

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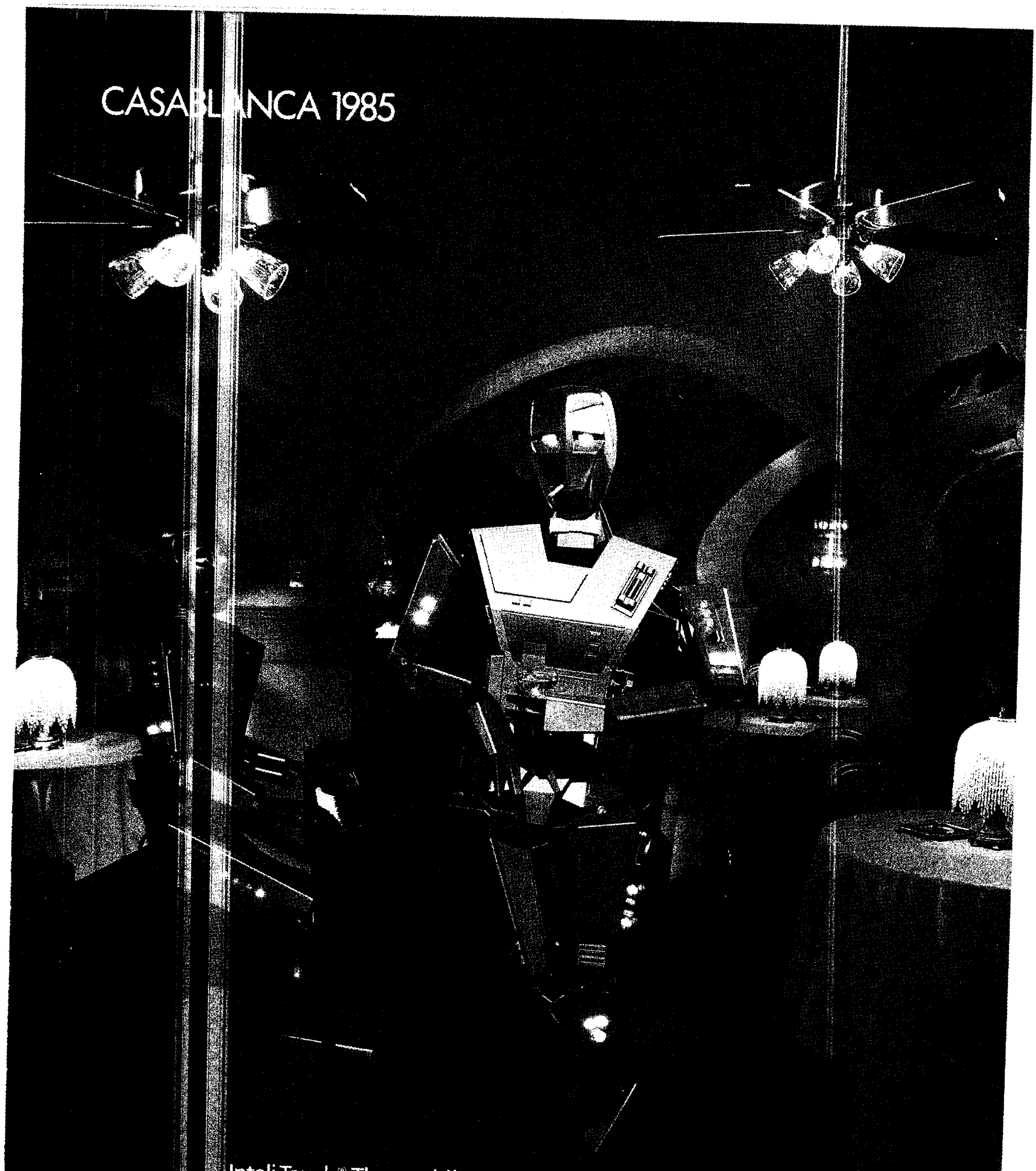

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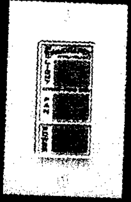

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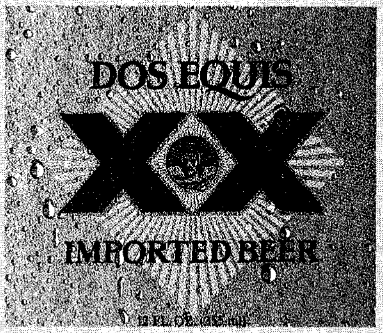

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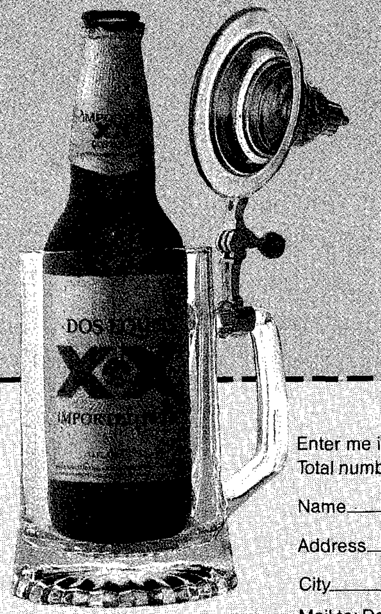

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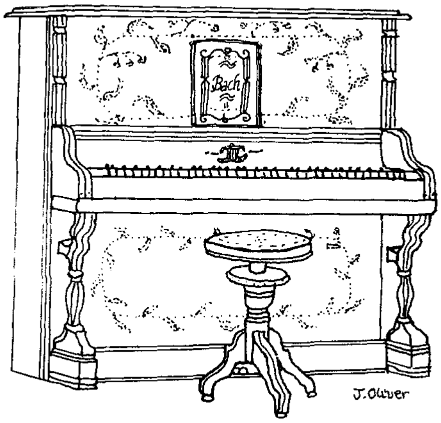
ered in people who merely lived in the vicinity of asbestos factories. Smith strongly recommended that the A.T.I. engage the Industrial Hygiene Foundation to study the relationship between the two diseases, in order to "combat current derogatory literature now being circulated throughout the United States and Canada."

The next day, the A.T.I.'s board of governors announced the appropriation of funds to initiate a preliminary survey that was designed to "investigate the possibility of more concerted action designed to refute the work of Dr. Hueper." A year later, however, six of the eight members of the institute's new air-hygiene and manufacturing committee voted against going ahead with the study, pointing out that the Q.A.M.A. was financing a similar investigation, and that "there is a feeling among certain members that such an investigation would stir up a hornet's nest and put the whole industry under suspicion."

As for the study being financed by the Q.A.M.A., it was entitled "An Epidemiological Study of Lung Cancer in Asbestos Miners" and was conducted during 1956 and 1957 by Dr. Daniel C. Braun, the medical director of the Industrial Hygiene Foundation, and T. David Truan, one of the foundation's statistical consultants. It was then carefully reviewed by Dr. Smith, who told Sabourin that he had "noted deletion of all references to the association of asbestosis and lung cancer," and that "Dr. Braun and his staff are to be congratulated heartily for this very valuable contribution to our medical knowledge." An expurgated version of the Braun-Truan study appeared in June of 1958 in the American Medical Association's *Archives of Industrial Health*. Among the deletions was an entire section entitled "Asbestosis and Lung Cancer."

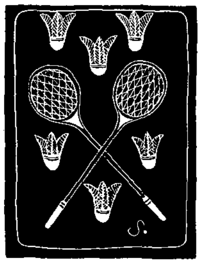
Over the next few years, Dr. Smith continued to advocate the suppression of reports about the health hazards of asbestos. At a meeting of the air-hygiene and manufacturing committee held in September of 1961, he urged that "irresponsible reporting" in the medical literature "be eliminated to avoid the high cost of compensation and product-liability litigation." As for the officials of the asbestos industry who listened to this kind of talk, they appeared to believe that they would be able to continue the thirty-year-old coverup of the asbestos hazard indefinitely. On October 8, 1964, at a meeting at the Barbizon-Plaza Hotel in New York City, the A.T.I.'s board of governors held a long discussion about how to combat unfavorable publicity concerning asbestos exposure and cancer which had been created by Dr. Selikoff prior to the international Conference on the Biological Effects of Asbestos, which was to be held later that month under the auspices of the New York Academy of Sciences. A few weeks later, Cadwalader, Wickersham & Taft, the institute's law firm, sent a letter to the executive director of the Academy, Mrs. Eunice Thomas Miner, urging caution in the public disclosure of information about the connection between asbestos and mesothelioma. She rejected it out of hand.

IN the summer of 1977, Locks was able to use the newly discovered A.T.I. minutes to good advantage in settling a number of cases that involved shipyard workers who had been exposed to insulation products manufactured by Johns-Manville and other members of the institute. He also sent the documents to a number of his colleagues. Among them was Paul T. Gillenwater, of Knoxville, who was happy to get his hands on the A.T.I. minutes, because he had lost the first asbestos case he had ever tried, a few months earlier, when the presiding judge refused to allow him to introduce the Smith deposition as evidence, on the ground that one of the defendants had not been present when it was taken. The son of a poultry wholesaler, Gillenwater was born in Knoxville in 1932, and graduated from high school there in 1950. After spending two years with an advertising agency, he joined the Navy, and upon his discharge, in 1954, he got married and went to the University of Tennessee, in Knoxville, where he studied business administration. He then entered the University of Tennessee College of Law and obtained his law degree in 1958. In 1961, he opened a law office in Knoxville and began to specialize in personal-injury and automobile-accident cases. Over the next ten years, he tried a number of product-liability lawsuits involving defectively constructed cars, transformers, and the like, but he had never been involved in a product-liability case involving occupational disease until the spring of 1975, when an asbestos insulator named Thomas Daniels, who was in his early thirties and had spent much of his ten years in the trade working in power plants that were being built for the Tennessee Valley Authority, walked into his office complaining of lung problems. After listening to Daniels, Gillenwater, who had never heard of asbestosis, turned him over to a young lawyer named Arthur Roberts, Jr., who handled the firm's workmen's-compensation cases.



"I gave Daniels to Roberts because I detest the whole compensation system," Gillenwater said recently as he sat in his unprepossessing office, in a one-story brick building in West Knoxville. "Here in Tennessee, as in most states, the manufacturers and the insurance companies have always controlled how the compensation statutes were written, and for this reason the deck has always been stacked against the worker. So when Tommy Daniels came into my office with what seemed like a clear-cut workmen's-comp complaint, I turned him over to young Roberts, who, as a matter of course, thumbed through the *American Law Reporter*—a digest of court cases—to see if there might be a third-party lawsuit in the making. And, lo and behold, Roberts came across the Borel decision and got all excited, and came back to me with the idea of suing the manufacturer of the insulation materials that Daniels had used. After reading Borel myself, I called down to Ward Stephenson's office, in Orange, Texas, found out he had died, and talked to Marlin Thompson, who told me which insulation companies to sue, and in June of 1975 I filed a product-liability lawsuit in Daniels' behalf in federal district court against Johns-Manville and some other manufacturers. The newspapers picked up the story and gave it a lot of publicity, and before I knew it I had ten insulator clients who were suffering from asbestosis. Like Daniels, all of them were union men who had worked for the Brooks-Fisher insulation company, an Atlanta-based firm that sold insulation products for Johns-Manville. Brooks-

Fisher had come up here to Tennessee in the late nineteen-forties, when the government was building the atomic-bomb-manufacturing facility out at Oak Ridge, and, by a crazy coincidence, my wife, Dorothy, had worked as a secretary for the company back in the fifties, not long after we got married. In fact, I remember that her little green Volkswagen used to be covered with white asbestos dust when I went over there to pick her up."



In the autumn of 1975, Gillenwater took on as a client an insulator named Jakie Starnes, who had developed early signs of asbestosis, and whose father had died of asbestosis and lung cancer. "Jakie Starnes was then in his early thirties, and, like his father and Tommy Daniels and most of the other insulators in East Tennessee, he had been exposed to asbestos while insulating thousands upon thousands of feet of high-temperature pipe in steam plants and power dams of the Tennessee Valley Authority," Gillenwater said. "That winter, I filed a lawsuit for him in federal district court in Greeneville—about seventy miles east of here—against Johns-Manville, Owens-Corning, Owens-Illinois, Celotex, Fibreboard, and the Rock Wool Manufacturing Company, of Leeds, Alabama, a company that made asbestos-cement products. In the spring, I got my hands on the Smith and Jackson depositions that had been taken by Tom Henderson, and over the next few months all the defendants in the Starnes case except Rock Wool offered to settle. But Starnes refused to settle with Johns-Manville, because he blamed the company for his father's death, so the case against Johns-Manville and Rock Wool Manufacturing went forward. In September, the presiding judge ruled that we couldn't introduce Henderson's Smith or Jackson depositions into the case, because Rock Wool had not been present when they were taken. At that point, I went out to Denver and deposed Jackson, who was equivocal about whether he and Dr. Smith had held discussions on placing warnings on asbestos-insulation products. I then made arrangements to take Dr. Smith's deposition on October 20th, at a Holiday Inn, in Detroit. On October 18th, however, Smith telephoned me to say that he would not be coming. He told me he had received a telephone call 'from out West,' as he put it, warning him not to cross the Canadian border. On November 2nd, he wrote me a letter saying that he couldn't testify anymore, because he needed to devote more time to his private practice. Whatever the case, with Smith unwilling to testify my ammunition was seriously depleted."

When Starnes came to trial, in February of 1977, the defense lawyer, Dennis Markusson, the Johns-Manville corporate counsel, erected the familiar state-of-the-art defense, claiming that while the company knew as far back as the nineteen-thirties that asbestos was harmful to factory workers, it did not know until Dr. Selikoff's pioneering epidemiology in 1964 that asbestos was a hazard for insulators. His chief witness was Dr. Paul Kotin, who was Johns-Manville's medical director and senior vice-president for health, safety, and environment. Before joining the company, in 1974, Kotin had been Dean of the Medical School at Temple University, in Philadelphia, and before that he had held high government posts—scientific director of the National Cancer Institute, and founding director of the National Institute of Environmental Health Sciences, at Research Triangle Park, North Carolina. A gray-haired, soft-spoken, and loquacious man of sixty, he testified with the authority of a physician and trained pathologist who had been in positions of considerable responsibility, and he made an effective case for Johns-Manville by pointing out that the 1946 Fleischer-Drinker study of shipyard workers, which had concluded that asbestos pipe covering was not a hazardous occupation, had been universally accepted by the medical community. Kotin went on to declare that judging the validity of their conclusion in retrospect was tantamount to Monday-morning quarterbacking.

During cross-examination, Gillenwater asked Kotin whether Johns-Manville should have known that inhalation of dust from its asbestos products would pose a health hazard for insulators and should have issued warnings to that effect. Kotin responded by saying that the company had no more responsibility for doing so "than the Bayer corporation has for going into my home when I take an aspirin." He declared that just because the liquor industry made liquor available it could not be held culpable for the fact that people will drive while drunk, and he went on to suggest that the same analogy should apply to Johns-Manville as a supplier of asbestos products in the workplace.

The Starnes trial ended with the jury's finding in favor of Johns-Manville and Rock Wool, and in November of 1977 the Daniels trial, which involved only Johns-Manville, ended in similar fashion. In assessing these verdicts, Gillenwater points out that both plaintiffs were men in their thirties who were still working and earning a living, and maintains that the jurors simply did not believe that they were sick. "Let me tell you, those two trials were an eyeopener for me," he says. "They made me realize that we were going to be in big trouble if we continued trying cases of early asbestosis on the basis of the evidence we had. As things stood, we had little or no choice about going to trial in such cases, because health-surveillance programs being undertaken for the Asbestos Workers union by Dr. Selikoff and other physicians were turning up X-ray evidence of early fibrosis, which automatically triggered the running of the statute of limitations in most states. The only solution was to go out and dig up more evidence that insulation manufacturers had early knowledge of the asbestos hazard—especially the hazard for insulators—and to present it in a way that would be convincing to juries. This was a tall order, of course. It meant that we plaintiff lawyers were going to have to spend a lot more time and money investigating what the asbestos companies had done in the past. It also meant that we were going to have to get lucky."

As things turned out, Gillenwater contributed greatly to this effort, by looking into the contract-unit companies that Johns-Manville, Armstrong Cork, Fibreboard, Owens-Corning, Philip Carey, and other asbestos-insulation manufacturers had set up in the nineteen-thirties and forties in order to bid on large insulation jobs in shipyards, power plants, and oil refineries. "In 1976, I learned that the Brooks-Fisher insulation company—the firm for which my wife had worked back in the nineteen-fifties—had been bought by Johns-Manville," he said. "Then I found out that Johns-Manville and other insulation manufacturers had had contract units for years. At first, I didn't realize their significance. Then, after I lost the Daniels case, it occurred to me that some of the insulators who had worked for these contract units must have developed asbestosis and filed workmen's-compensation claims for disability. If that was so, Johns-Manville and the other insulation manufacturers who owned the contract units must have known for many years that their products were making insulators sick. And if *that* was so it would deal a heavy blow to the state-of-the-art defense, which was built on the claim that they knew no such thing until 1964. Of course, everything hinged on whether we could actually locate some contract-unit disease claims. And that's where we got lucky, because in January of 1978 a young lawyer we knew in South Carolina dug one up by searching through the *Decennial Digest*—a listing that is compiled every ten years of cases that have been appealed. It was the workmen's-compensation claim of an asbestos insulator who had developed asbestosis in the late nineteen-forties as a result of working for a contract unit of the Armstrong Cork Company, and it was our first really big break."

IN the spring of 1976, Gillenwater and his law partner Ward Whelchel had found themselves representing plaintiffs in three asbestosis cases they could not file in Tennessee, because of the state's one-year statute of limitations. Their clients had once worked at a nuclear power plant near Aiken, South Carolina, so they referred the cases to a thirty-one-year-old trial lawyer named Ronald Motley, who had made a reputation specializing in product-liability actions in South Carolina, where there was a six-year statute of limitations. Motley, the son of a service-station owner, was born and brought up in a blue-collar section of North Charleston. He attended the University of South Carolina, in Columbia, and in 1971 he received his law degree from the law school there. He then spent two years as a clerk for the United States District Judge Solomon Blatt, Jr., in Charleston, and later practiced part time with a plaintiff lawyer who specialized in personal-injury cases. In 1975, he joined Blatt & Fales, a small but highly regarded law firm in Barnwell—a town of about five thousand inhabitants in the farming region just south of Aiken—whose founder and senior partner, Solomon Blatt, was Judge Blatt's father, the speaker of the South Carolina House of Representatives, and a legendary plaintiff lawyer in a state that had been famous for plaintiff lawyers since the days of John C. Calhoun.

Ambitious, assertive, and self-confident, Motley is a lanky, black-haired man who bears a resemblance to the French actor Jean-Paul Belmondo and speaks with a deep drawl. He soon made a name for himself at Blatt & Fales by bringing in several sizable settlements in product-liability cases—the largest was a settlement for a case involving a defective heater that killed some children—and by 1976, when Gillenwater and Whelchel referred their asbestos cases to him, he was lecturing on product-liability law around the state, and would soon be elected president (the youngest ever) of the South Carolina Trial Lawyers Association.

"I filed my first asbestos case in June of 1976 in federal court in Charleston, and settled it for more than a hundred thousand dollars a year and a half later," Motley recalls. "That got a lot of publicity in the press, and I started getting calls from union lawyers in other parts of the state, as well as in Georgia and North Carolina. Before the summer was over, Terry Richardson—a partner of mine at Blatt & Fales—and I had been referred into seventeen cases, which we later settled for sums ranging from about fifty thousand to about two hundred and fifty thousand dollars. Then, in November of 1977, I tried my first case and came a cropper. The plaintiff was a non-union asbestos insulator named William Baumgardner, who had developed asbestosis, and the trial was held in federal district court in Aiken. Among the defendants were Johns-Manville, Raybestos-Manhattan, and Owens-Corning. By that time, I had not only the Smith deposition but also the minutes of the Asbestos Textile Institute, which had been unearthed by Gene Locks, and I was pretty cocksure.

"As things turned out, however, Lively Wilson blew me out of the water with a brilliant three-pronged medical state-of-the-art defense, which he orchestrated with the aid of a videotaped deposition from Dr. Kotin, Johns-Manville's medical director. First, Kotin made effective use of the Fleischer-Drinker study, just as he had in the Starnes and Daniels cases, to advance the claim that Johns-Manville and other insulation manufacturers had no reason to suppose that asbestos insulators were at risk of developing asbestosis. Second, he pointed out that the threshold limit value of

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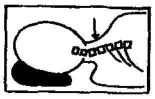

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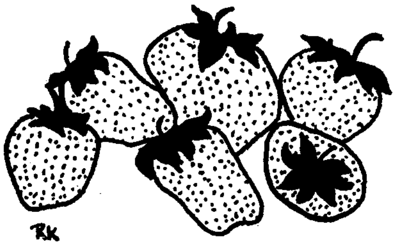
five million particles per cubic foot, which was in effect until 1968, was based on a study of textile factories, in which workers were exposed to one-hundred-per-cent asbestos fibre, whereas the insulators were working with materials that contained only about fifteen per cent asbestos. And, finally, he dismissed individual case reports showing disease among asbestos insulators by claiming that they were isolated anecdotes plucked from the garbage heap of medical literature. To buttress Kotin's testimony, Wilson brought in Dr. Forde McIver, a well-known sixty-year-old pathologist from the Medical College of South Carolina, in Charleston, who was then in private practice. Both Kotin and McIver were older, experienced-looking men, who spoke persuasively and told the jury in effect that they, veteran medical doctors, had had no idea that asbestos insulators were in jeopardy until 1964, when Dr. Selikoff descended from Mount Sinai with his tablets of epidemiological truth. For my part, I not only got nowhere with them in cross-examination but made the mistake of trying to counter them with younger doctors, including a pathologist who had been a student of McIver's. This gave Wilson the opportunity to point out that my expert witness had not even started medical school when Selikoff performed his studies of the insulation workers. As for our big ammunition—the Smith deposition—it went down the tubes when the presiding judge decreed that it be read by his law clerk, who managed to do so in a monotone so flat that it's a wonder the jurors didn't fall asleep. I made use of the A.T.I. minutes, of course, but, presented in isolation, they turned out to be not as significant as we had hoped. In the end, the judge instructed the jury to decide the medical state-of-the-art question first, and the jury stayed out less than an hour before finding that the defendants could not have known that asbestos insulators were at risk of developing disease, and had therefore incurred *no* duty to warn Baumgardner that their products could be harmful to his health."

After losing the Baumgardner case, Motley concluded that he needed more discovery and better expert witnesses if he was going to prevail over Lively Wilson's improved state-of-the-art defense. With this in mind, he travelled to Chicago in December of 1977 and persuaded Dr. Bertram Carnow, of the University of Illinois's School of Public Health, to be an expert witness for the plaintiffs. He then went to New York City, where he conferred at length with Dr. Selikoff, in order to acquire the benefit of his expertise in asbestos disease. Afterward, he spent a week at the National Library of Medicine, in Bethesda, Maryland, combing through the medical literature for additional reports of asbestosis among insulators. Far and away the most important discovery he made during this period, however, took place in the library of the University of South Carolina School of Law in early January of 1978.

"Around the time I lost Baumgardner, Gillenwater told me about his brainstorm that some of the contract-unit employees must have filed for workmen's compensation for asbestosis disability in years past," Motley continued. "Hoping to find evidence of this, I went to the law library and spent a week poring over digests that listed state and federal appellate-court decisions going back to the nineteen-thirties. The digests didn't break the cases down by topic but listed them by plaintiff and defendant, so I picked Armstrong Cork, which came first alphabetically, and read until my eyes blurred over. It was like trying to find a needle in a haystack, of course, but I finally came across Hyatt v. Armstrong Cork Company—a workmen's-compensation claim brought in 1953 by an insulator named Floyd Hyatt, who had developed asbestosis a few years earlier. During the next few months, we located dozens of other contract-unit disease claims that had been brought during the nineteen-fifties, against Armstrong Cork, Johns-Manville, Owens-Corning, and Philip Carey. They dealt a serious blow to the medical state-of-the-art defense, which depends heavily upon the judgment of doctors such as Kotin and McIver as to what the consensus among the medical profession about asbestos disease might have been at a given time but is extremely vulnerable to documents showing what a company actually knew or should have known about asbestos disease, as opposed to what expert witnesses say that it might have known. Hyatt v. Armstrong Cork and the other contract-unit disease claims furnished convincing proof that a number of leading manufacturers knew about the hazard to insulators long before 1964, and once we got our hands on these claims the state-of-the-art defense was never the same again."



At the time Motley dug up Hyatt v. Armstrong, he was in the middle of conducting discovery for a case involving an asbestos insulator named Gordon Luther Barnett, who had died in his sixties of mesothelioma, and for whose estate Motley had filed a lawsuit in the Court of Common Pleas of Greenville, South Carolina, against Johns-Manville, Raybestos-Manhattan, Owens-Corning Fiberglas, Celotex, Keene, Armstrong Cork, Eagle-Picher, Forty-Eight Insulations, Pittsburgh Corning, Nicolet, and Covil, a local distributor of asbestos-insulation products. After finding Hyatt v. Armstrong Cork, Motley subpoenaed Armstrong Cork's workmen's-compensation records for contract-unit employees, and the company responded by producing a list of the names and addresses of a hundred insulators who had filed occupational-disease claims between 1953 and 1976. Thirty-seven of the claims were brought during the eleven-year period between September of 1953, when Floyd Hyatt filed his claim, and October of 1964, when Dr. Selikoff and his colleagues announced the results of their study of disease among asbestos insulators in New Jersey and New York. Upon examining the list, Motley was struck by the fact that eighteen of the thirty-seven claims had been filed in California. As a result, he and Gillenwater hired a thirty-two-year-old environmental activist named Barry Castleman, from Washington, D.C., to go to California and look up the hearing records of these claims at the California Industrial Accident Commission.

Meanwhile, on March 27, 1978, Motley went to trial in the Barnett case before Circuit Court Judge James Price, and once again found himself up against the redoubtable Lively Wilson, who once again called upon Dr. Kotin and Dr. McIver to testify that until 1964 Johns-Manville and the other defendants had no way of knowing that insulators such as Barnett were at risk of developing illness. To counter Wilson's defense, Motley introduced the deposition of Dr. Smith and the list of insulators who had filed occupational-disease claims against Armstrong Cork. Wilson contested both pieces of evidence, claiming that Smith was a disgruntled employee who could not be believed, and pointing out that the contract-unit disease claims against Armstrong Cork did not involve Johns-Manville and were statistically insignificant. The trial ended on April 6th, and after six hours of deliberation the jury returned a verdict in favor of the defendants. Astonished and disappointed, Motley made a motion for a new trial, on the ground that the verdict went against the weight of the evidence. Such motions are rarely granted unless there are highly unusual extenuating circumstances, and Judge Price denied Motley's, even though he would later declare that he personally had been persuaded by the plaintiff's case. The loss in Barnett was Motley's second in a row, and was particularly galling in that he was now zero-for-two against Lively Wilson. Within a few weeks, however, some stunning developments in the Barnett case vaulted Motley into the front rank of asbestos litigators and profoundly altered the course of asbestos litigation.

The new turn in the tide of events began when Gillenwater subpoenaed Armstrong Cork's compensation records for its contract-unit employees, just as Motley had done a few months before. But this time Armstrong Cork, instead of responding with a list of the names and addresses of workers who had brought claims, produced dozens of actual claim files, including a number of compensation hearings that had been held before the California Industrial Accident Commission during the nineteen-fifties. These hearing records showed that asbestos insulators employed by contract units had brought claims for disability from asbestosis not only against Armstrong Cork but against Johns-Manville, Owens-Corning, Philip Carey (a firm that was later purchased by Celotex), and the Mundet Cork Corporation, of North Bergen, New Jersey—a company that was subsequently bought by Baldwin-Ehret-Hill, which, in turn, was taken over by Keene. The records also indicated that these companies had notified their insurance carriers of the claims and had hired lawyers to defend themselves. Thus, it was clear that, contrary to their assertions in court, five of the defendants in Barnett—Johns-Manville, Armstrong Cork, Celotex, Owens-Corning, and Keene—had either known long before 1964 of the hazard to asbestos insulators, or could be held legally responsible because they owned companies that had known of it. When Motley heard about the California claims from Gillenwater, he decided to file another motion for a new trial in Barnett, on the ground that substantial and important evidence that should have been produced for the first trial had not come to light until after it was over.

As luck would have it, Motley was about to acquire even more ammunition from Gillenwater. Just before the Barnett case went to trial, Gillenwater had made a trip to Hartford, Connecticut, to look for contract-unit disease cases in the records of the Travelers Insurance Company, the holder of workmen's-compensation coverage for some of the contract units owned by Johns-Manville, and in those of the Aetna Casualty & Surety Company, which carried insurance for Owens-Corning and Philip Carey, by then owned by Celotex. In Hartford, he was joined by Karl Asch, who told him about the Sumner Simpson file, which had been in his possession for nearly a year. It was the first Gillenwater had heard of the Simpson papers, and when Johns-Manville and Raybestos-Manhattan were acquitted at the conclusion of the Barnett trial, a few days later, he told Motley about them.

On April 26, 1978, the asbestos hazard received some belated national attention when, nearly fourteen years after the New York Academy of Sciences' international Conference on the Biological Effects of Asbestos had clearly indicted the mineral as a potent carcinogen and lung-disease-producing agent, Secretary of Health, Education, and Welfare Joseph A. Califano, Jr., issued a statement that this was indeed the case. Califano went on to say that the total number of workers exposed to asbestos since the beginning of the Second World War was estimated at between eight and eleven million, including four and a half million men and women who had undergone significant exposure while they were working in wartime shipyards. He then announced that he had ordered the Surgeon General of the United States to send an advisory letter to all four hundred thousand physicians in the nation describing the health risks posed by asbestos. At the

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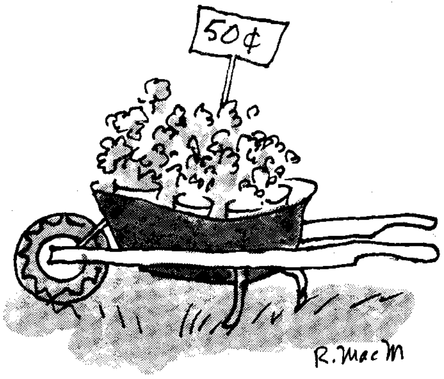
same time, he urged that workers who had been exposed to asbestos stop smoking cigarettes, citing Dr. Selikoff's 1964 finding that cigarette smokers exposed to asbestos were likely to incur lung cancer at a rate up to ninety times as great as that of people who neither smoked nor worked with asbestos.

Secretary Califano's announcement was soon followed by a second New York Academy conference on asbestos disease—this one entitled Health Hazards of Asbestos Exposure and held at the New York Hilton in late June. Among those in attendance was Karl Asch, who had been invited to deliver a paper on the legal and political ramifications of asbestos disease. Asch proceeded to level some scathing criticism at a bill known as the Asbestos Health Hazards Compensation Act, which had been introduced in the House by Representative Millicent Fenwick, of New Jersey. Among other things, Fenwick's measure, which had been drafted by lawyers connected with the asbestos industry, proposed to eliminate any further product-liability actions against the industry and to use the federal treasury to pay off existing claims, before an industry fund was set up to pay compensation to workers who developed asbestos disease in the future. According to Fenwick, whose congressional district included the town of Manville, where Johns-Manville had operated a complex of asbestos factories since 1912, one reason for relieving the asbestos manufacturers of financial liability was that "the full scope of the diseases causally related to asbestos and/or cigarette tobacco smoke was unknown to industry, labor, government, or medicine until recent times." This contention was bitterly assailed by Asch, who, after describing some of the correspondence that had passed between Sumner Simpson, of Raybestos-Manhattan, and high officials of Johns-Manville, asked "why the American taxpayer should pick up the costs for those who sowed the seeds of asbestos death and disease."

Also attending the conference were Ronald Motley, who wanted desperately to get his hands on the Sumner Simpson papers, and Henry Weinstein, a staff writer for the Los Angeles *Times*, who was interested in them as well. Upon hearing that the papers might be found at the federal district courthouse in Newark, where Austin v. Johns-Manville had been filed, Motley, Weinstein, and Barry Castleman, who was also at the conference, took a cab out there, only to learn that under New Jersey procedure the documents were being held by Johns-Manville's attorneys. At that point, Weinstein called the company's outside counsel, David Gross, at the Newark firm of Budd, Larner, Kent, Gross, Picillo & Rosenbaum, and asked to see them, but Gross refused. In the end, Motley got the Simpson papers through court order, and submitted them in his motion for a new trial in the Barnett case, which he made on June 30th.

On August 24th, following a hearing on July 17th, Judge Price issued an order granting a new trial in the case against Johns-Manville, Raybestos-Manhattan, Owens-Corning, Celotex, Keene, and Armstrong Cork. Judge Price ruled that the correspondence between Raybestos-Manhattan and Johns-Manville "reflects a conscious effort by the industry in the 1930's to downplay, or arguably suppress, the dissemination of information to employees and the public for fear of the promotion of law suits," and that, contrary to the defendants' state-of-the-art defense, "the voluminous evidence of contract-unit disease claims constitutes compelling proof of actual notice to certain manufacturers that asbestos-containing thermal insulation products indeed caused disease in insulators."

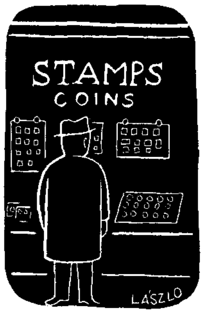
Judge Price's unusual order eventually led to an out-of-court settlement of the Barnett case. In the meantime, the Sumner Simpson file and the contract-unit disease claims enabled Motley to have the videotaped 1977 deposition of Dr. Paul Kotin—a deposition that had been used with telling effect in winning jury verdicts for the defendant manufacturers in several trials—thrown out, on the ground that the evidence that had been withheld rendered previous cross-examinations ineffective. The new evidence made it possible for Motley and other plaintiff lawyers to cross-examine Dr. Kotin with such effectiveness in future depositions that Johns-Manville eventually ceased to use him as an expert witness for the state-of-the-art defense. Most important of all, it encouraged Motley and his colleagues to dig out more of what Johns-Manville and the other giants of the asbestos industry had known about asbestos disease and when they had learned it. As a result, the next year saw a virtual landslide of discovery of incriminating documents from the asbestos manufacturers.



ONE of the most important discoveries occurred when Motley made a motion for Raybestos-Manhattan to produce additional documents that were being stored at the offices of its attorneys, in Morristown, New Jersey, and so came into possession of the report of the dust surveys and medical studies that had been conducted during the spring of 1947 in ten asbestos-textile plants belonging to Raybestos-Manhattan, Johns-Manville, and other member companies of the Asbestos Textile Institute by W. C. L. Hemeon, the head engineer of the Industrial Hygiene Foundation of America, and Dr. C. Richard Walmer, the foundation's medical director. The existence of the Hemeon report, which was never published, had been known to the plaintiff attorneys since 1977, when Gene Locks found mention of it in the minutes of the Asbestos Textile Institute's 1947 meetings, but none of them had had the slightest idea of how incriminating it would prove to be. Hemeon started out by telling the members of the institute that there was a serious lack of information about the incidence of asbestosis among their employees, because programs for taking chest X-rays existed in only five of the ten factories he had surveyed. He then informed them that in two facilities where such programs were in operation—the Raybestos-Manhattan factory in Manheim, Pennsylvania, and the Johns-Manville plant in Manville, New Jersey—he had found that some twenty per cent of the work force had developed the disease. Having alerted the member companies to the fact that asbestosis was occurring among their workers, Hemeon warned them that adherence to the threshold limit of five million particles of dust per cubic foot provided no assurance that asbestosis would not develop in workers who were employed over long periods of time, and he recommended that studies be initiated to develop a better standard.

As might be expected, Hemeon's

findings and recommendations further weakened the state-of-the-art defense, since it contradicted the contention of the asbestos manufacturers that they had had every reason to believe that the five-million-particle standard was safe—a claim they had been advancing in every trial since Borel. Accordingly, the Hemeon report soon became a major weapon in the arsenal of disclosure that was being amassed by the plaintiff lawyers. “From a legal standpoint, Hemeon conducted far and away the most significant study of asbestos disease that was ever done in the United States,” Motley has declared. “It’s not just a smoking gun; it’s a stick of dynamite with a burning fuse.”



Gillenwater agrees with Motley’s assessment of the importance of the Hemeon report, and goes on to explain how he and other plaintiff lawyers have used it in court. “You take the expert medical witnesses whom Johns-Manville and the other defendant manufacturers keep putting on the stand,” he says. “Up until the time we got our hands on Hemeon, they had been testifying in trial after trial that during the nineteen-forties, fifties, and early sixties everybody in the medical profession thought that five million particles was a perfectly safe level of exposure for workers. But then we started asking them on cross-examination if they had ever heard of the 1947 Hemeon report, which strongly suggested that the five-million-particle standard might not be safe. And, of course, since the Hemeon report was never published, they had to answer that they had not heard of it, which gave us the chance to show the jury that the defendants’ medical experts were not so expert after all, and that their opinion of what the medical profession may or may not have known back in the nineteen-forties was, in fact, irrelevant. In short, Hemeon afforded us a perfect opportunity to remind the jury that it is the asbestos industry which is on trial. The way I like to do this is to ask the expert witness the following question: ‘Was it responsible, Doctor, for the asbestos industry not to tell you and your colleagues in the medical profession that in fact a medical survey of the lungs of asbestos workers showed that they were developing asbestosis in large numbers way back in the nineteen-forties in conditions where the five-million-particle standard was being met?’ I do the same thing with the contract-unit disease claims. I say, ‘Dr. So-and-So, you’re here testifying in behalf of industry about what you think doctors and medical scientists could have known about asbestos disease among insulators back in the nineteen-forties and fifties. But here in black-and-white are workmen’s-compensation claims that show exactly what the asbestos manufacturers knew and when they knew it. Why didn’t the defendant manufacturers inform you about these claims, Doctor?’ Let me tell you, questions like these rarely draw much of an answer from the expert witnesses, and they have a devastating effect upon the state-of-the-art defense.”

At about the same time that Motley was digging up the Hemeon report, Gillenwater got a telephone call from a man who said that he was a former employee of Johns-Manville and that he had some interesting documents he felt Gillenwater should see. The caller suggested that Gillenwater catch a plane to Washington, D.C., the next day and take a room at the Hyatt Regency Washington hotel. He then told Gillenwater that he would meet him in the lobby, leave the documents on a table, and go into the bathroom to wash his hands, and that he would not be surprised if the documents were gone when he returned. In this rather bizarre fashion, Gillenwater came into possession of the notes of several lengthy meetings of the Manville plant’s health-review committee, which were held at the Johns-Manville manufacturing complex in Manville, New Jersey, between July of 1957 and April of 1958 in order to evaluate the health status of employees who were afflicted with pulmonary disease. The members of the committee included Dr. Smith, the company’s medical director; Dr. David T. DuBow and Dr. Edwin D. Merrill, both of whom were Manville plant physicians; and Clifford L. Sheckler, who was then supervisor of safety and health at the Manville complex. A medical secretary made notes of what was said at the various meetings, and some of the dialogue she recorded was incriminating, because it clearly indicated that Johns-Manville had developed a corporate policy of not informing sick employees of the precise nature of their health problems for fear of work-

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men's-compensation claims and lawsuits.

A typical case involved whether to give a medical examination to a forty-nine-year-old woman who had developed first-stage asbestosis after working as a spinner in the textile plant for seventeen years, and was thought to be ready to institute a compensation claim. Dr. DuBow advised against calling her in for examination, on the ground that "we may aggravate this into something decisive." He gave similar advice in the case of a woman who had developed moderately advanced asbestosis after working for sixteen years as a weaver and spooler in the textile plant and was being considered for transfer to a non-dusty area. "If she is called in, she will get hysterical, and I am sure you will have a claim on your hands," he declared.

At a subsequent meeting, Sheckler, who later acknowledged that he had handled several hundred workmen's-compensation claims for asbestosis at the Manville plant between 1957 and 1959, discussed the problem of how to deal with a fifty-two-year-old worker, with twenty-eight years of employment, who was upset because the company had not informed him of changes in his chest X-rays, and was thought to be ready to file a formal claim. "I foresee one-hundred-per-cent total disability," Sheckler said. "They have us over a barrel. There is a new case law. You must make a bona-fide offer prior to the filing of the formal. If not made before, the offer has no meaning. That means we do or we do not do it. We have to outguess these people at this point. We do not know when or if they will file."

No guesswork was necessary, however, in dealing with the case of a fifty-two-year-old shift foreman who had developed asbestosis after working for twenty-three years in the Transite-pipe department, where asbestos-cement water pipe was fabricated.

"Advanced pneumoconiosis," Dr. Smith declared after looking at the patient's medical file.

"Should we change him?" inquired Sheckler, who wanted to know if a transfer to a non-dusty area was in order.

"Won't make any difference," Smith replied.

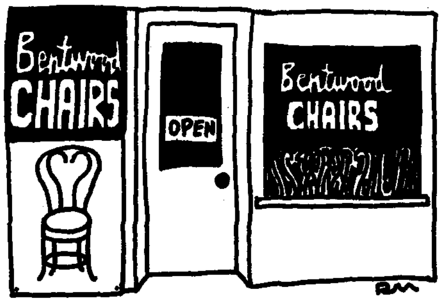
"If he hits sixty-five, I will be surprised," Dr. DuBow said.

On the basis of such advice, Sheckler decided to take no action other than to watch the patient carefully and retire him on disability, if, as he put it, it became "necessary."

Because Sheckler was one of Johns-Manville's leading expert witnesses for the state-of-the-art defense, the discovery of his role as a member of the Manville health-review committee—a discovery that came almost seven years after he had testified in the Borel case that Johns-Manville had always been deeply concerned about the health and welfare of its employees—did little to enhance his credibility, and the plaintiff lawyers were able to use the new disclosures to challenge his testimony far more effectively than they had in the past.

DURING that summer, Motley sent copies of key documents from the Sumner Simpson file to Dr. Selikoff, in order to keep him abreast of the latest disclosures of culpability on the part of the asbestos industry. Selikoff, for his part, advised Motley to get in touch with Dr. Schepers, the former director of the Saranac Laboratory, who was then working for the Veterans Administration in Washington, D.C., saying that Schepers might have some interesting stories to tell. At the 1964 Conference on the Biological Effects of Asbestos, Schepers had said that when he went into the northeastern Transvaal in 1949 to make a clinical survey of the asbestos industry in South Africa for the South African government, he had found barefoot Bantu children spending their days inside large jute shipping bags, where they were forced by overseers armed with whips to trample down fluffy amosite asbestos as it came cascading over their heads into the bags. According to Schepers, a number of these children had developed asbestosis with cor pulmonale—right-sided heart failure, which often accompanies the disease—before the age of twelve, and he had told his listeners at the conference that he would be very surprised if any of them had lived long enough to develop either lung cancer or mesothelioma.

In July, shortly after filing his motion for a new trial in the Barnett case, Motley followed Selikoff's advice, and telephoned Schepers at his home in Great Falls, Virginia. "I told Dr. Schepers who I was and what I was up to and asked to meet with him," Motley recalls. "On August 17th, Paul Gillenwater, Gene Locks, and I talked with Schepers for seven hours at the Hyatt Regency Washington, on Capitol Hill. Schepers told us that the South African government had sent him to the United States in 1949 to study the pneumoconiosis problem under Dr. Anthony Lanza, who had retired from the Metropolitan Life Insurance Company, and was then at the New York University Medical Center. He acknowledged that Lanza, who became his mentor, had been overinfluenced by the asbestos industry in dealing with the problem of asbestos disease, but he defended Lanza by pointing out that he would not have been able to conduct his research if he had not gone along with the industry's dictates. During this visit, Schepers spent three months at the Saranac Laboratory with its director, Dr. Arthur Vorwald, who was a longtime consultant for the asbestos industry. He also met Vandiver Brown, the corporate counsel for Johns-Manville, who wanted him to delete material that was embarrassing to Johns-Manville from a report he was preparing for his superiors in South Africa. In 1954, Schepers returned to the United States and replaced Vorwald as the director of the Saranac Laboratory. Soon thereafter, he was asked to review the chest X-rays, autopsy material, and health records of some of Johns-Manville's dead workers, and to write reports about them. Schepers later allowed us to examine copies of these reports, which he had stored in the basement of his house. Each of them was entitled 'Medico-Legal Opinion in Respect of Occupational Chest Disease,' and he had sent the originals to Johns-Manville's Manhattan headquarters, on Fortieth Street. Some of the employees had worked at the Johns-Manville plant in Manville, New Jersey; others had worked at the factory in Waukegan, Illinois; and a few had worked at the company's plants in Nashua, New Hampshire, and in Billerica, Massachusetts. Schepers had found that many of them had died of right-sided heart failure provoked by asbestosis."



The most important document in Schepers' basement proved to be an article he and two associates had written about the biological effects of a thermal-insulation material called Kaylo. The Owens-Illinois Glass Company, of Toledo, Ohio, had developed Kaylo during the nineteen-thirties, and had begun manufacturing it in the early nineteen-forties. The trade name was derived from the so-called K factor—an engineering term for the rate at which heat passes through an inch of insulation. The better the insulation, the lower the heat loss, or K factor; hence the name "Kaylo." In the text of the article, which had been published in the September, 1955, issue of the American Medical Association's *Archives of Industrial Health*, Schepers and his associates made no mention of Kaylo by name, referring instead to hydrous calcium silicate, a commercial product made from calcium hydroxide and silica, with a chrysotile-asbestos content of about fifteen per cent, but in the opening paragraph they revealed that the biological effects of this product upon test animals had been studied in inhalation experiments at the Saranac Laboratory starting in 1943, and in the concluding section they said that its dust had caused fibrosis and lesions in the lungs of the test animals that "closely resembled those found in experimental asbestosis," and that this harmful effect was probably caused by the chrysotile asbestos it contained.

Starting in 1930, Dr. Leroy U. Gardner, the director of the Saranac Laboratory, had conducted inhalation experiments with asbestos dust. He had used pure asbestos in his early animal experiments, however, so the industry had always been able to claim that his results could apply only to the exposure undergone by asbestos-factory workers, who used one-hundred-per-cent asbestos fibre. Thus, Schepers' mention of the fact that an insulation product containing only fifteen per cent asbestos had been shown to cause disease had tremendous implications for the state-of-the-art defense. Small wonder that when he found this tantalizing clue in Schepers' basement Motley and his colleagues embarked on an intensive search to determine exactly what was known about the harmful effects of Kaylo and how early this knowledge had been imparted to its maker, Owens-Illinois. Their efforts ultimately led to the discovery of what have come to be called the Kaylo documents—some thirty thousand pages that revealed prior knowledge of asbestos disease not only

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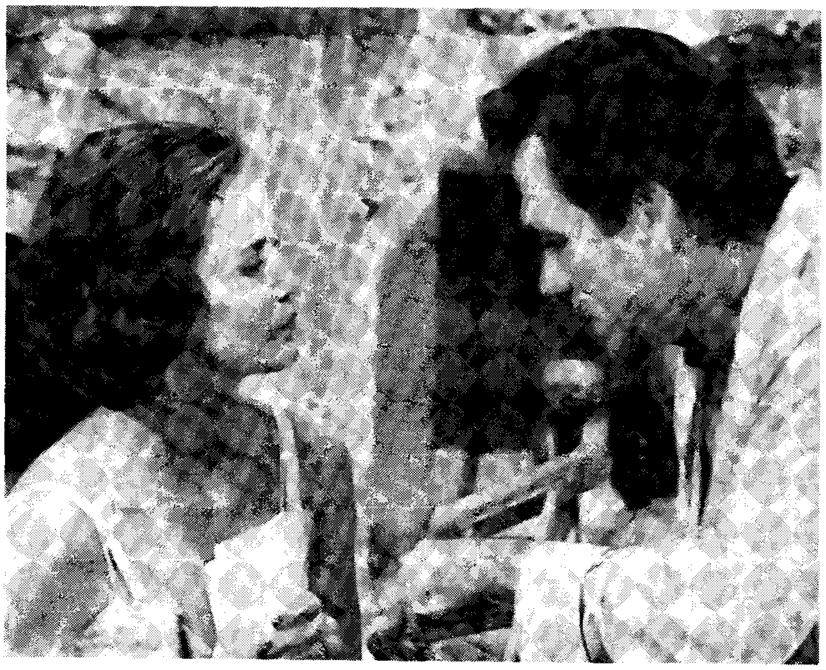

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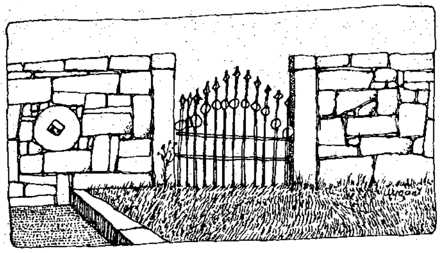
on the part of Owens-Illinois but on the part of the Owens-Corning Fiberglas Corporation, also of Toledo, which had begun to distribute Kaylo in 1953 and had bought the entire Kaylo line from Owens-Illinois in 1958.

The search for the Kaylo documents began in the spring of 1979, when Tom Henderson served a subpoena duces tecum upon the director of the Saranac Laboratory in connection with two asbestos lawsuits that he had filed in nearby Albany. In May, he and Barry Castleman spent a day and a half sifting through several thousand pages of documents that had been retrieved from an old shed on the laboratory grounds, and found records of early experiments with Kaylo, as well as correspondence between Dr. Gardner and high officials of Owens-Illinois. During the summer, the quest for other Kaylo documents led to the Armed Forces Institute of Pathology, in Bethesda, Maryland, to which the widow of Dr. Vorwald, who succeeded Gardner as director of the Saranac Laboratory, had deeded his medical papers following his death, in 1974. (Among these papers was a letter that had been written to Vorwald in 1951 by Dr. Samuel L. Keller, the physician at Johns-Manville's plant in Waukegan, Illinois, who lightheartedly invited Vorwald to visit the plant so that he could "see the manufacturer of asbestosis and silicosis as produced in Waukegan.") The rest of the Kaylo documents were produced by Owens-Corning from the summer of 1979 through the winter of 1980, as a result of litigation involving sick workers at a Kaylo-manufacturing plant in Berlin, New Jersey, which Owens-Corning had bought from Owens-Illinois in 1958. Since the state's workmen's-compensation statute prevented these workers from suing their employer, they had brought a product-liability action against a number of asbestos-mining companies, claiming that the companies had failed to warn them about the health hazards of asbestos. The mining companies, in turn, erected a sophisticated-user defense, claiming that they had no reason to warn the Owens-Corning workers, because Owens-Corning knew more about the health hazards of asbestos than they did. In order to prove this contention, the defendants subpoenaed Owens-Corning to produce its records and documents dealing with Kaylo, and when Owens-Corning was forced by law to accede to the request the plaintiff lawyers simply gathered them in like trout gobbling up a hatch of mayflies on a stream.

On February 12, 1943, U. E. Bowes, Owens-Illinois's director of research, wrote Dr. Gardner that he was sending him samples of a newly developed thermal-insulating material, which turned out to be Kaylo. Bowes asked Gardner to conduct tests to determine if the product was hazardous from "the standpoint of the employees working in the plant where the material is made or where it may be sawed to desired dimensions," and also "from the standpoint of applicators or erectors at the point of use." In May of 1944, Gardner reported that he had produced a condition similar to asbestosis by injecting Kaylo into the lungs of test animals. In November, Bowes told him to "proceed with whatever investigations are necessary to establish the degree to which the material we are manufacturing at Berlin, New Jersey, constitutes a hazard, either to employees engaged in the manufacture of it or to others in the use or installation of it," and Gardner wrote back that he would expose test animals to high concentrations of Kaylo dust in order to determine whether it could be inhaled into the lungs and cause pulmonary disease.

Dr. Gardner died in October of 1946, and a year later his successor, Dr. Vorwald, who had served as a pathologist at the Saranac Laboratory from 1934 to 1942, sent an interim report on the Kaylo experiments to Owens-Illinois, saying that it had been "tentatively concluded that Kaylo alone fails to produce significant pulmonary damage when inhaled into the lung." In the autumn of 1948, however, Vorwald informed Bowes that "in all animals sacrificed after more than 30 months exposure to Kaylo dust unmistakable evidence of asbestosis has developed, showing that Kaylo on inhalation is capable of producing asbestosis and must be regarded as potentially-hazardous material." In the final paragraph of his letter, Vorwald warned Bowes and Owens-Illinois that Kaylo might pose a grave danger to the company's employees. "I realize that our findings regarding Kaylo are less favorable than anticipated," he wrote. "However, since Kaylo is capable of producing asbestosis, it is better to discover it now in animals rather than later in industrial workers. Thus the company, being forewarned, will be in a better position to institute adequate control measures for safeguarding exposed employees and protecting its own interests."



On February 7, 1952, Vorwald sent the final report of the study of the biological effects of Kaylo to Willis G. Hazard, an industrial-hygiene specialist in Owens-Illinois's industrial-relations division. The report was entitled "Investigation Concerning the Capacity of Inhaled Kaylo Dust to Injure the Lung," and it was marked "CONFIDENTIAL." It informed Owens-Illinois that four hundred and fifty animals had been exposed to Kaylo in a special chamber over a five-year period, and that when Kaylo dust was inhaled over that period it was capable of producing fibrosis typical of asbestosis in the lungs of such animals. In an accompanying letter, Vorwald warned Hazard, "The results of the study indicate that every precaution should be taken to protect workers against inhaling the dust." At the same time, he took pains to assure Hazard that Owens-Illinois would be spared any embarrassment by these findings. "We hope to publish this study either separately or in combination with similar studies pertaining to other dust," he wrote. "In doing so, however, reference will be made only to hydrous calcium silicate and not to 'Kaylo;' thus the interest of your company will be safeguarded. Of course, the final manuscript will be forwarded to you for review before being released to the publisher."

Presumably encouraged by Vorwald's guarantee of anonymity, the managers of Owens-Illinois went ahead with the production of Kaylo, at factories in Berlin and Sayreville, New Jersey, and instituted a program of giving preëmployment and annual X-rays to the five hundred and five people who worked in these plants. As for the publication of the Saranac Laboratory's findings, this did not occur until September of 1955, more than three and a half years after Vorwald submitted his final report. By that time, Dr. Schepers had replaced Vorwald as director of the laboratory, and he was asked to evaluate the results of the experiments that had previously been performed on

Kaylo. Schepers' article based on this evaluation, though it triggered the search for the other Kaylo documents twenty-four years later, caused little consternation at the time among the managers of Owens-Illinois. In fact, they appeared to be delighted with Schepers' final paragraph, which blamed the chrysotile-asbestos component of Kaylo, rather than its hydrous-calcium-silicate content, for the fibrosis it produced in the lungs of test animals. "This means that Kaylo is no more harmful than the universally used heat insulation—asbestos—in fact less so, since Kaylo contains a very small percentage of asbestos," Hazard observed in an intra-company memo that was sent on October 5, 1955, to Milton M. Olander, the industrial-relations director of Owens-Illinois. He went on to assure Olander that there was no mention whatsoever of either Kaylo or Owens-Illinois in Schepers' article.

WHILE Schepers' article on the disease potential of Kaylo was regarded with relative equanimity by the managers of Owens-Illinois, in downtown Toledo, two other articles written by him in the same issue of the *Archives of Industrial Health*, warning that glass fibres should be regarded as potentially harmful, caused repercussions of almost seismic proportions in the general offices of the Owens-Corning Fiberglas Corporation, also in downtown Toledo. In a memorandum of December 6, 1955, directed to Harold Boeschenstein, the president of Owens-Corning, a company official analyzed the legal implications of Schepers' articles, warning that they "can be cited effectively in damage suits aginst us." A few months later, another Owens-Corning official recommended to Boeschenstein that an investigation be undertaken to determine "whether Saranac's business is slipping and whether he"—Schepers—"resorts to alarmist tactics to sell the Laboratory's services." The information, he assured Boeschenstein, could be gathered "on a confidential basis" and used "as a weapon in reserve."

Examination of other Kaylo documents shows that such procedures were old hat at Owens-Corning. Back in the spring of 1941, company officials had learned that the Asbestos Workers union might try to claim that Fiberglas constituted a health hazard, in order to win increased wages in upcoming labor negotiations with in-

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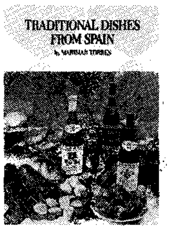
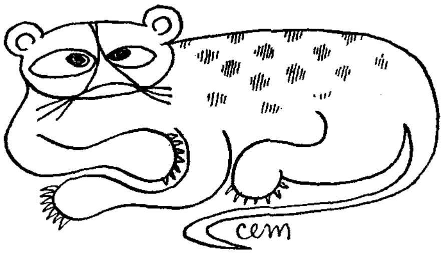


sulation contractors. In a memo sent to Boeschenstein in January of 1942, Edward C. Ames, Owens-Corning's public-relations manager, outlined a strategy for dealing with this threat. He proposed to "gather as a weapon in reserve an impressive file of photostats of medical literature on asbestosis," which he said could be used to split the union rank and file, and to "play all the stops on asbestosis" if the leadership persisted in its plan regarding Fiberglas. In the end, officials of the Asbestos Workers union accepted an alternative proposal, and Owens-Corning was spared the necessity of warning the nation's insulators about the health hazards of the asbestos materials they were using. Ten years later, the company's managers no doubt considered this outcome fortunate when they reached an agreement with their counterparts at Owens-Illinois to act as the nationwide marketing distributor for Kaylo. And in 1958 Owens-Corning purchased the Kaylo line, including the Kaylo-producing plant in Berlin, New Jersey, which made it the sole manufacturer of the stuff. As part of the deal, Owens-Illinois shipped the Saranac Laboratory file on Kaylo to its new owner; this meant that Owens-Corning knew or should have known when it bought Kaylo that the product was hazardous to health. Meanwhile, as early as 1956, insulator employees of Owens-Corning's contract units had begun to file workmen's-compensation claims for disability caused by asbestosis. But none of this appeared to bother the new makers of Kaylo, who did not get around to warning that Kaylo was dangerous to inhale until December of 1966.

In the summer of 1969, Owens-Corning finally came to the realization that big legal trouble might lie ahead. In August, John Vyverberg, an executive in its New York offices, sent a memo to the company's leading officials informing them that the firm had settled the Claude J. Tomplait case out of court earlier in the year and had been named as a defendant in two new lawsuits. Vyverberg went on to point out that although Aetna was handling the company's defense in these cases, "any settlements are indirectly paid by us." He then wrote a pair of sentences that, coming two months before Stephenson filed Borel, were prophetic. "This is just the beginning, in my opinion," he told his colleagues. "Unfortunately, the trend is toward litigation instead of claim settlement through workmen's compensation."

As it happened, the beginning was not terribly serious for Owens-Corning, which, like other asbestos manufacturers, erected the familiar state-of-the-art defense and dug in its heels. The company had settled the Tomplait case for fifteen thousand dollars, and then it got out of the Borel case for a mere four thousand two hundred and twenty-five. Over the next decade, Owens-Corning and Aetna settled over a hundred cases for relatively small amounts largely because plaintiff lawyers had no way of proving that Owens-Corning officials had had prior knowledge of the risk of asbestos disease for insulators. All that changed in 1979, of course, when the trail of discovery led to an abandoned shed on the grounds of the Trudeau Foundation's laboratory at Saranac, and to some long-forgotten files at the Armed Forces Institute of Pathology, in Bethesda, and when officials of Owens-Corning were forced by subpoena to produce the rest of the incriminating record, which the company had possessed for nearly forty years. From then on, Owens-Corning was a prime target for higher damage awards and, together with Owens-Illinois, was subjected to intense pressure by other defendant manufacturers to contribute more heavily to out-of-court settlements in product-liability cases brought by asbestos insulators who had used Kaylo.

MEANWHILE, some stunning disclosures about the past conduct of Johns-Manville were coming out of California, where the company had operated manufacturing plants for many years in Long Beach, Lompoc, Carson, Redwood City, Stockton, and Pittsburg. The plant in Pittsburg, an industrial town in Contra Costa County, about thirty-five miles northeast of San Francisco, had been manufacturing asbestos shingles, roofing, and insulation products since 1926, and the California discovery got its start in 1968, when a Mexican-born shingle-cutting-machine operator named Marcos Antonio Vela, who had developed asbestosis after working at the Pittsburg plant for thirty-two years, retained a workmen's-compensation attorney named Maurice S. Marcus, from nearby Pleasant Hill. Upon learning that a physician under contract to Johns-Manville had examined Vela and had not informed him that he had developed lung disease, Marcus referred his new client to a medical-malpractice lawyer in San Francisco. Vela then filed suit against the physician, Dr. Kent Wise, who in 1962 had succeeded his father, Dr. David Wise, as the doctor for some three hundred and seventy-five employees at the Pittsburg plant. (The elder Wise had served there under contract to Johns-Manville since 1926.) In 1973, after a three-week trial in Contra Costa County Superior Court, during which medical records containing Kent Wise's handwritten notation that Vela was suffering from asbestosis were introduced in evidence, a jury awarded Vela three hundred and fifty-one thousand dollars in damages. It was an unprecedented verdict against an industry physician, and, as might be expected, it provoked considerable uneasiness within the industrial-medical community.

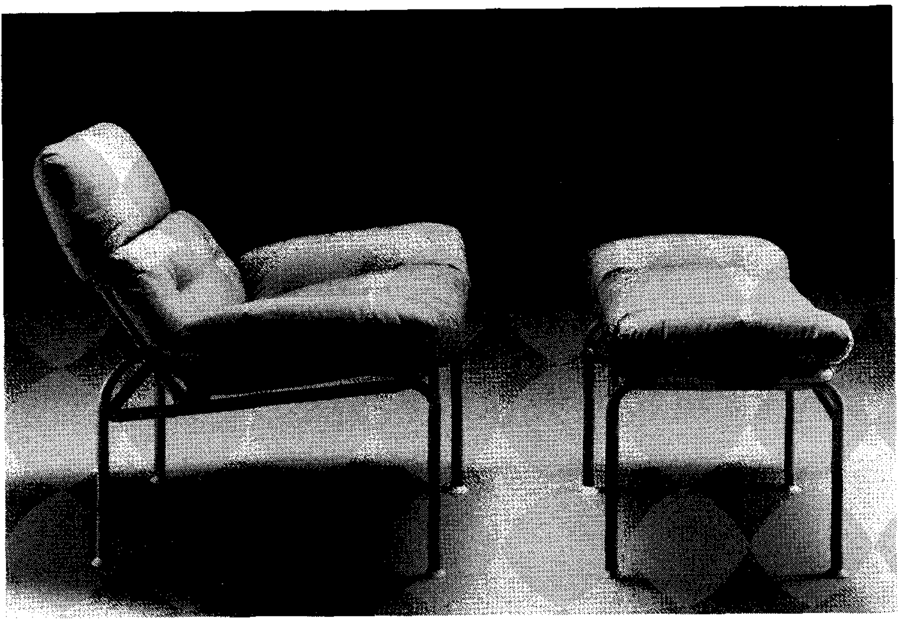


During 1973 and 1974, Marcus referred five similar asbestosis cases from the Pittsburg plant to a fifty-year-old lawyer named George W. Kilbourne, who had been associated with him a few years earlier. Kilbourne filed them as medical-malpractice suits, but, knowing that many other workers at the Pittsburg plant had developed asbestosis and that Dr. Wise's malpractice insurance would be exhausted long before their cases could be tried, he realized that it would soon be necessary to find a defendant with large financial resources. (In the lexicon of plaintiff lawyers, such defendants are often referred to as "deep pockets.") The Pittsburg-plant workers were prevented from suing Johns-Manville by the California Labor Code, which stipulated that workmen's compensation was an exclusive remedy, but the more Kilbourne thought about this the more he became convinced that he should mount a legal challenge to the exclusivity of workmen's compensation, on the ground that Johns-Manville had engaged in conspiracy and fraud by failing to inform his clients that they had developed lung disease as a result of their exposure to asbestos. For this reason, he decided not to rely on third-party lawsuits against the mining companies that had supplied raw asbestos to the Pittsburg plant, as Karl Asch had done in the case of the workers at Raybestos-Manhattan's Passaic plant, and as Fred Baron had done in the case of the employees at Pittsburgh Corning's Tyler plant. "I came to the conclusion that if my clients couldn't sue Johns-Manville for what that company had done to them, then workmen's compensation was nothing more than a license for manufacturers to kill," he has said. It was a conclusion that marked the start of a long journey of discovery for Kilbourne and revealed him to be one of the most innovative asbestos litigators since Ward Stephenson.

After graduating from high school, Kilbourne attended college for a year, and then joined the Marines. He spent the Second World War in the Pacific theatre, and upon being discharged he entered the University of Michigan, graduating in 1946 with a degree in engineering, and then went to law school at the University of California at Berkeley, from which he graduated in 1951. After five years in general practice in Berkeley, he moved to Sullivan, Indiana—a coal-mining town south of Terre Haute—where he spent the next six years handling personal-injury and workmen's-compensation cases, many of them for District 11 of the United Mine Workers. In 1963, he moved back to Berkeley, and in 1975 he opened his own law office in Pleasant Hill, and soon began to acquire clients from the nearby Pittsburg plant. The first of these was a man named Reba Rudkin, who had worked at the factory for twenty-nine years and had developed asbestosis. The second was a fifty-seven-year-old worker named Harold Browner, who walked into Kilbourne's office off the street one day in the summer of 1975 seeking a lawyer to represent him on a drunk-driving charge—a case complicated by the fact that after working at the Pittsburg plant for twelve years Browner had developed asbestosis and had undergone surgery for the removal of parts of both lungs, and had been unable to blow hard enough to activate the breath-analysis test administered by the police officers who arrested him.

Late in 1975, Kilbourne and Steven Kazan, a malpractice attorney who had been with the firm that handled the Vela case, filed lawsuits in behalf of Rudkin and Browner in Contra Costa County Superior Court against Dr. Kent Wise, who by then

BROWN JORDAN



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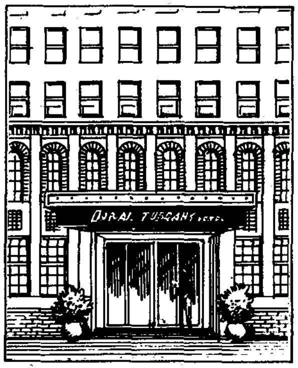

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had been named as a defendant in at least eight lawsuits seeking damages of more than fifty million dollars, and against Dr. David Wise, who in the nineteen-fifties had pronounced Browner fit only a few months before he was found to have developed disabling asbestosis. Browner's suit was later dismissed when the judge in the case ruled that under California's statute of limitations he should have brought his action in the nineteen-fifties, when he underwent lung surgery and learned that he had developed asbestosis. A third defendant was the Johns-Manville Corporation, which was accused of negligence for imposing an inadequate medical-surveillance program on the plaintiffs, and for allowing them to be exposed to asbestos although it knew that asbestos exposure could lead to serious lung disease. As for Dr. Wise, he countersued Johns-Manville—the company had refused to defend either him or his father—for ten million dollars in each case, claiming that he had been deceived by company officials, who had hired him only for the purpose of performing preëmployment and annual physicals, and had assured him that he would not be responsible for reading X-rays of workers who developed pulmonary disease.

By the late summer of 1977, Kilbourne and Kazan had filed similar lawsuits in behalf of nearly thirty other workers from the Pittsburg plant—some of whom had died—who had developed asbestosis or other lung disease. In October of that year, on the basis of newly discovered evidence, a Superior Court judge ruled that the two attorneys could amend the lawsuits to accuse Johns-Manville of conspiracy and fraud. By that time, Kilbourne and Kazan had also filed suit against Johns-Manville in behalf of forty-one workers who had developed either asbestosis or lung cancer or a form of silicosis after working at the company's plant in Lompoc, a town near the Pacific Coast forty-five miles northwest of Santa Barbara, where large deposits of diatomaceous earth—a substance formed by the accumulation over millions of years of the siliceous shells of small aquatic plants called diatoms—had been mined, milled, and used in insulation products and filters since 1928. Johns-Manville's lawyers appealed the judge's ruling in the Pittsburg cases, on the ground that the company could not be held liable for conspiracy and fraud under the California Labor Code provision that workmen's compensation was an exclusive remedy, and this marked the beginning of a series of appeals and decisions that delayed any of the cases from going to trial for the next three years. During this time, both Browner and Rudkin died of lung cancer, and Kilbourne embarked upon his ambitious and imaginative program of discovery, which enabled him to make disclosures about Johns-Manville's corporate policy regarding asbestos disease that surprised and shocked even the most hardened plaintiff attorneys.

THE new evidence that persuaded the Superior Court judge to allow Kilbourne and Kazan to charge Johns-Manville with conspiracy and fraud had been dug up in 1976 by a San Francisco journalist named Paul Shinoff, who had obtained copies of the minutes of some meetings of Johns-Manville industrial-relations managers that were held in the nineteen-sixties. At one of these meetings, the ubiquitous Dr. Smith urged the managers to support the company's industrial-health program, citing a scandalous health situation that had existed at the Lompoc facility during the early nineteen-fifties. Smith told the managers that dusty and unhealthy conditions had caused the workers at Lompoc to go out on strike and that the California State Department of Public Health had threatened to close the plant unless Johns-Manville cleaned it up and operated it according to state health regulations. He also told them about an article in the January, 1952, issue of *Search*, the monthly journal of the California Tuberculosis Association, whose cover showed a picture of the Lompoc plant beneath a stamp that read "Death by Dust."

Smith claimed that *Search's* assessment of working conditions at the Lompoc plant was exaggerated, but the hearing records of some twenty death or disability claims that were brought before the California Industrial Accident Commission during the nineteen-thirties, forties, and fifties bear stark witness to the human suffering and tragedy that occurred there. A particularly grim episode is described in the record of a death claim that was brought on January 4, 1932, by a woman named María Martínez, who filed it against the Celite Company—a Johns-Manville subsidiary that operated the Lompoc plant—and several insurance firms, including Travelers, Standard Accident, and the Pacific Indemnity Company. María Martínez's husband, Macedonio, had died in August of 1930, at the age of thirty-three, after working for only two and a half years at the Lompoc plant as a janitor and bag loader. The report of Dr. Milton V. Duncan, of Lompoc, who signed a death certificate listing the cause of Martínez's death as "acute edema of the lungs" reads like a horror story. "I saw Macedonio Martínez on the morning of August 23, 1930, at about 6:00 A.M.," Dr. Duncan wrote. "I was called to his house by a friend and found him sitting on a bed gasping for breath—blood fleck foam coming from his mouth and nose—a half pint of similar fluid in a can beside the bed had been expectorated previously. His expression was that of extreme terror—his face was pale and his skin clammy with cold perspiration; pulse about 150 thready; heart sounds indistinct; chest full of bubbling, piping rales. He was talking loudly in Spanish, repeating the word 'morir.' In a few seconds he began to gasp harder and with a rush of fluid from his nose and mouth he expired."

At a claims hearing that was held in April of 1932, Dr. Duncan testified that he believed Martínez might have been suffering from silicosis, but the assistant medical director of the California Industrial Accident Commission disagreed, ascribing Martínez's death to a cardiovascular lesion, and in July of that year the workmen's-compensation referee in the case denied María Martínez's claim. According to the hearing report, she was pregnant when he died, and for six months thereafter she suffered from "a mental state which precluded her giving any thought to business affairs." It is not known what became of her. It is known, however, that seven months before Macedonio Martínez died he was given a physical examination and a chest X-ray during a health survey of the Lompoc plant, which was conducted by two physicians from the University of California School of Medicine, in San Francisco, and that they found him to be suffering from pulmonary dust disease.

Many of the other early Lompoc compensation claims reveal similarly dismal stories of sick and dying men who were suffering from silicosis but whose ailment was often misdiagnosed by medical doctors retained by insurance companies, whereupon the men were denied benefits for disability by referees of the Industrial Accident

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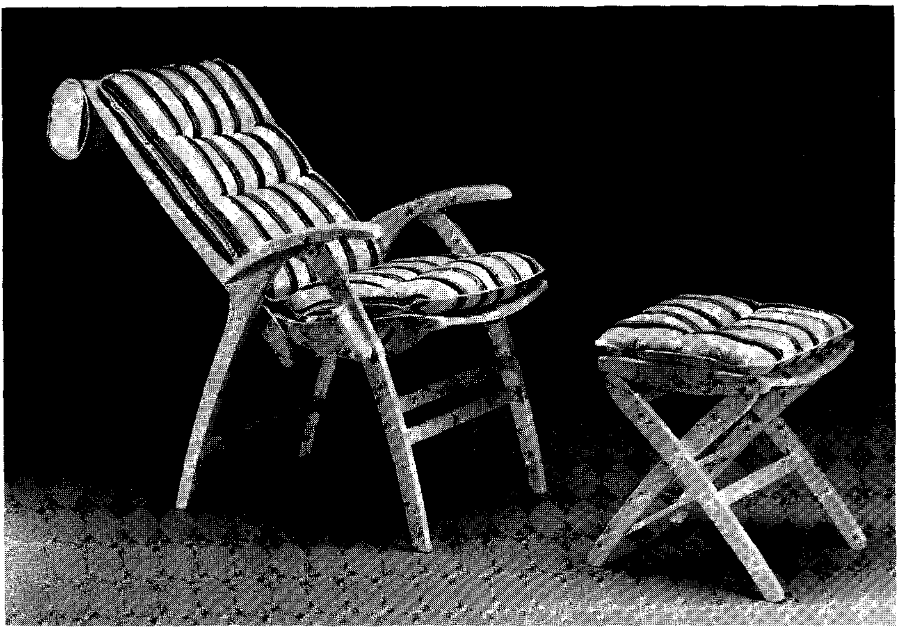

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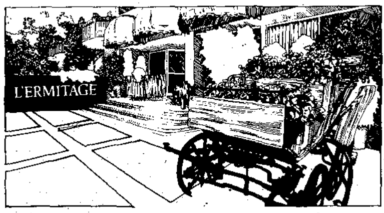

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Commission. This state of affairs would probably have continued if the California Department of Public Health had not threatened to shut down the Lompoc mill and quarry in 1952, forcing Johns-Manville to institute dust-control measures and employee-health programs there, and to place warning labels on insulation products containing diatomaceous earth. By that time, Macedonio Martínez had been dead for more than two decades.

As for Dr. Smith, who claimed that the conditions at Lompoc had been exaggerated, he continued to reveal the true nature of Johns-Manville's corporate policy regarding occupational disease at subsequent industrial-relations managers' meetings. In January of 1966, he declared that one of the company's chief "external health problems" was "the widespread adverse publicity given to the use of asbestos fiber and its connection with cancer." Smith, who was about to retire from Johns-Manville, ended his talk by saying, "In closing, let me reassure you concerning the alleged association of cancer and asbestos. Nowhere in Johns-Manville have I seen any concrete evidence that this association does exist."

Not surprisingly, the minutes of the industrial-relations managers' meetings made Kilbourne wonder just when high-ranking officials of Johns-Manville had known that company employees were developing lung disease because of their exposure to asbestos, and he began to study the early literature about asbestos disease. One night during the late autumn of 1977, while he was reading "Silicosis and Asbestosis," published in 1938, he came across the chapter that Dr. Lanza had written about the health and economic aspects of pulmonary dust disease, and read a passage that seemed to answer his question. "Silicosis and asbestosis burst upon the amazed consciousness of American industry during the period 1929-1930," Lanza had written, and he had gone on to say, "Among the first claims for damages were those for asbestosis, a hitherto unheard of disease in the United States."

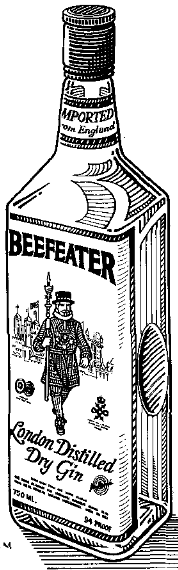
The more Kilbourne thought about these sentences, the more he wondered if there might be some reference to the early claims for damages in Johns-Manville's corporate records. Investigating further, he learned that in 1927 J. P. Morgan & Co., of New York City, had bought a controlling interest in Johns-Manville, and that since that year at least one Morgan officer had sat on the company's board of directors. Assuming that the records of board meetings had been maintained through the years, he made a motion in the Rudkin case to compel Johns-Manville to produce the minutes of any meeting at which the subject of compensation claims for asbestosis had been discussed. At first, company officials claimed that the board members had held no such discussions until 1968, but when Kilbourne made subsequent motions for production someone in Johns-Manville's legal department rooted through some old records that had been stored in the basement of the company's headquarters, in Denver, and found the minutes of board of directors' meetings that had been convened between 1928 and 1935. These documents were sent to Arthur J. Moore, of Moore, Clifford, Wolfe, Larson & Trutner, an Oakland law firm that had been retained by Travelers to defend Johns-Manville in the Pittsburg-plant cases, and Moore sent them along to Kilbourne in the autumn of 1978. Among them were the minutes of the April 24, 1933, board meeting at which the directors present had authorized the president of the company to settle eleven pending asbestosis cases for thirty-five thousand dollars if he could get the attorney for the plaintiffs to agree not to bring any more lawsuits.

Kilbourne was, of course, tremendously excited by the discovery of these early asbestosis claims, and a few days later he called the clerk of the federal district court in Newark to find out if they were still on file. The clerk informed him that the cases were in some archives that had been stored in Bayonne, and that an attorney for Johns-Manville had come by and requested copies of them a week earlier. The clerk went on to say that he had spent a lot of time preparing a cross-indexed list that would enable the company attorney to find the claims in the archives, and that he was not about to do the whole thing over again. Kilbourne proceeded to notice production of the list from Johns-Manville, but company officials denied that it existed. Assuming that the Johns-Manville people had obtained copies of the claims from the Bayonne archives, he noticed production of the records themselves. During the next year and a half, company officials claimed first that they had no idea what he was talking about, then that the records he was seeking did not exist, and, finally, that they had no way of retrieving them. As a result, Kilbourne was forced to file three separate motions to compel their production, and did not come into possession of them until September of 1980.

THE records of the early New Jersey asbestosis claims included the eleven lawsuits that had been settled in 1933 and nine other cases, which were disposed of between 1930 and 1962. (The earliest case had been filed on May 8, 1929, by Anna Pirskowski, who had quit work at the Manville plant back in 1922, because, according to her complaint, her inhalation of asbestos used in Johns-Manville's manufacturing process caused her "to suffer permanently with a malignant disease.") Sixteen of the twenty cases—the eleven that were settled in 1933 and five that were dismissed on April 14, 1930—were brought by Samuel Greenstone, an attorney from Newark, who approached Johns-Manville's outside legal counsel Hobart & Minard sometime in early 1933 with an offer to settle the eleven remaining cases at what was apparently considered a bargain rate. Greenstone may well have been anxious to settle, because each of his clients in the five cases that were dismissed in 1930 had signed a statement in the late autumn of 1929 declaring that he or she had no desire to pursue a lawsuit against Johns-Manville, and would not have initiated it had Greenstone not urged it.

In view of the sudden and almost simultaneous reluctance of these five people to sue Johns-Manville, Greenstone's offer to settle the other eleven cases cheaply appears to have been the strategy of a man who was hoping to prevent history from repeating itself. In any event, the covenant he was forced to sign to the effect that he would neither directly nor indirectly participate in the bringing of any new lawsuits against Johns-Manville was undoubtedly worth the thirty-five-thousand-dollar settlement price to the company, for it effectively neutralized him as a legal threat. Indeed, more than ten years passed before another lawsuit alleging negligence for asbestos disease was brought against Johns-Manville by one of its New Jersey employees.

ALTHOUGH Kilbourne's various motions to produce had simply asked for the factory workers' asbesto-



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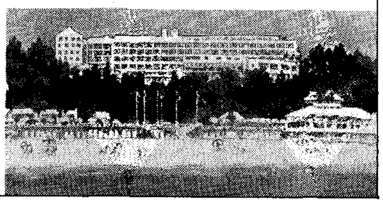

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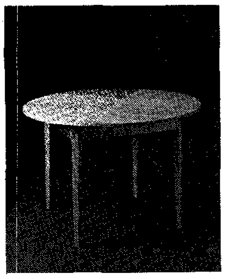

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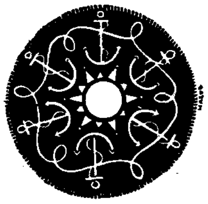
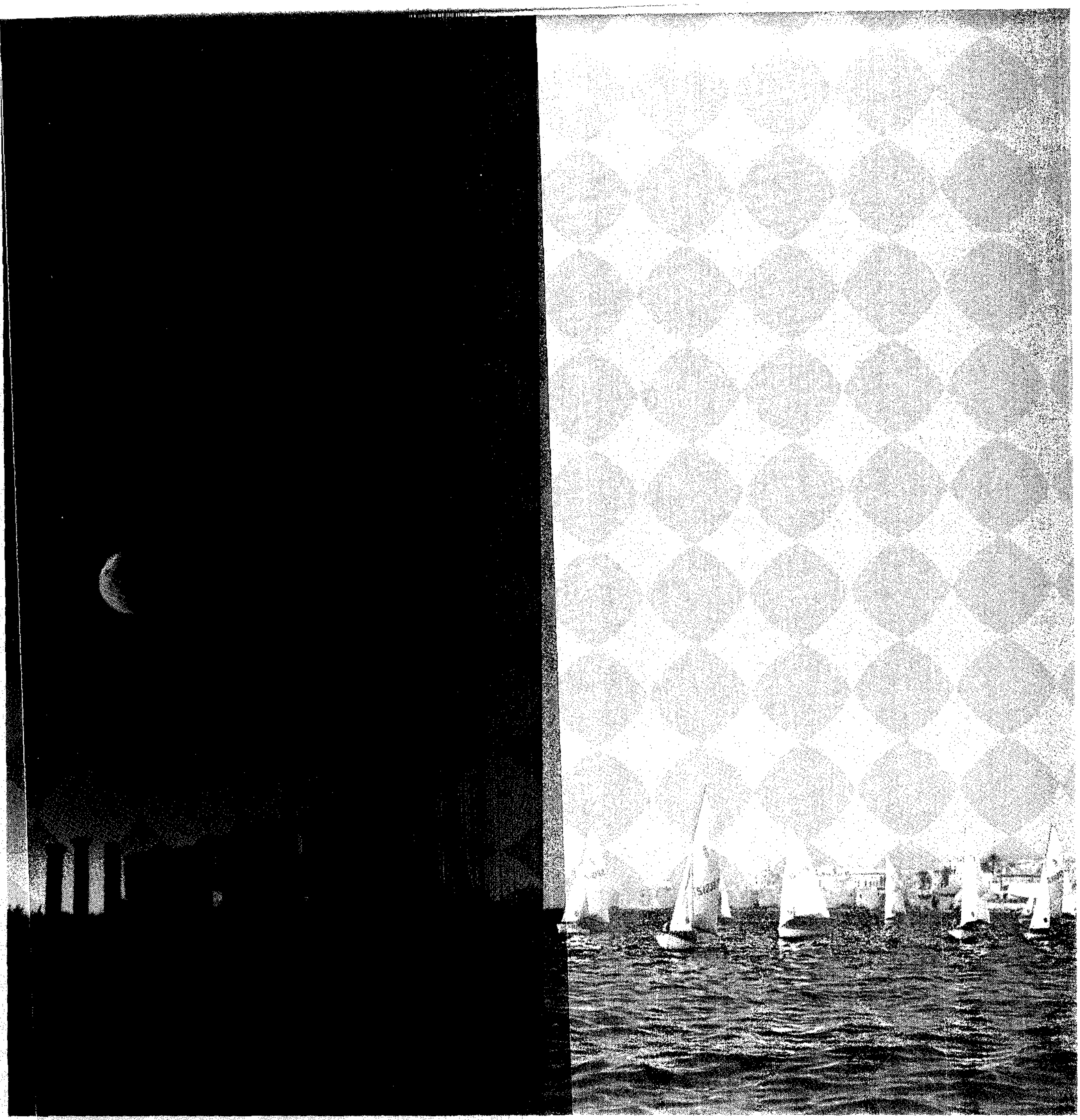
sis claims that were referred to in the 1933 board of directors' meeting, someone at Johns-Manville had inadvertently sent him a list that included the cases of Frederick Le Grand and Fred C. Wenham, two asbestos insulators from New Jersey who had brought and settled third-party lawsuits for negligence and breach of warranty—the first ever filed against the company by insulators—in 1957 and 1961. (The breach-of-warranty complaint was subsequently dismissed in Le Grand's case.) This was a major blunder, for it furnished further proof that Johns-Manville had known for more than seven years before Selikoff announced his findings, and more than a dozen years before Borel, that insulators were developing serious lung disease as a result of using its asbestos-insulation products.



"You won't believe what I've found," Kilbourne said when he called Gillenwater to tell him about this discovery. "They've even listed who the plaintiff's attorneys were!" Gillenwater immediately called both lawyers—William L. Brach, of East Orange, who had represented Le Grand, and Franklin Swersky, of Springfield, who had represented Wenham—and arranged to depose them. Then he sent one of his associates to Newark to obtain the records in the two cases, which had been filed in the United States District Court for the District of New Jersey. The record of the Le Grand case was particularly revealing, because it showed that Johns-Manville's responses to Brach's interrogatories had been something less than accurate.

In 1926, Le Grand had joined Newark Local 32 of the Asbestos Workers union—this was one of the two locals whose ghastly mortality experience from asbestos disease were to be documented by the epidemiological study of Dr. Selikoff and his colleagues—and over the next twenty-eight years he had applied asbestos insulation, most of which was manufactured by Johns-Manville, to high-temperature pipes and other equipment in oil refineries, factories, schools, hospitals, and other facilities in New Jersey and New York. His physician, Dr. Samuel Einhorn, of Newark, testified that Le Grand, following a heart attack in February of 1956, when he underwent hospitalization and extensive testing, had been found to have asbestosis. In April of 1957, Le Grand received a seventy-five-per-cent permanent-disability award from the Workmen's Compensation Division of the New Jersey Department of Labor, and in July of that year he filed his third-party lawsuit for negligence and breach of warranty against the Johns-Manville Products Corporation. His complaint alleged that he had developed asbestosis as a result of handling Johns-Manville asbestos-insulation products, that the company knew or should have known that these products were unsafe, and that it was negligent in having failed to warn him about the hazards associated with their use. The interrogatories that Brach propounded and sent to Johns-Manville asked whether the company had been aware that asbestosis was developing in workers who had been exposed to its asbestos-insulation products; whether it had issued any warnings about the risk of handling these products to anyone other than its employees; and when it had first "learned that any of its own employees had contracted the disease commonly called asbestosis." In April of 1958, Herbert Morton Ball, who was the secretary of the Johns-Manville Products Corporation, replied to these questions under oath, saying that the company had no knowledge of any case of asbestosis ever being contracted by an applicator of its asbestos-insulation products, and that since it had "never received notice of any claim of asbestosis resulting to any persons other than our employees who were engaged in the manufacture of the products, we had no reason to issue any warnings, instructions or preventions to any other persons." Ball also said that asbestosis "was first contracted by an employee of this defendant at one of its plants in 1946."

If these answers were, as Ball swore, "true to the best of my information and belief," he must have been one of the most poorly informed secretaries in corporate history, for dozens of cases of asbestosis had occurred in contract-unit insulators, and disease claims had been filed by these employees all during the early nineteen-fifties. Moreover, high officials of Johns-Manville had known since the early nineteen-thirties—thanks to the report of Dr. Lanza, of Metropolitan Life, and to the eleven lawsuits that were settled in New Jersey—that workers in the company's asbestos factories were developing pulmonary asbestosis. Ball's denials notwithstanding, Brach



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proceeded to negotiate an out-of-court settlement with John J. Monigan, Jr., of Stryker, Tams & Horner, of Newark—the law firm that later represented Metropolitan Life in the Passaic workers' lawsuit—under whose terms Le Grand agreed to drop his complaint against Johns-Manville for thirty-five thousand dollars. An order dismissing the case was signed on April 6, 1959, and the court hearing that was held at the time is particularly noteworthy because of an unusual agreement that Brach and Monigan made with the Travelers Insurance Company, which not only carried Johns-Manville's general liability insurance but held workmen's-compensation coverage for the insulation company that had employed Le Grand. The agreement stipulated that there would be no attempt by the workmen's-compensation department of Travelers to assert a lien against the thirty-five-thousand-dollar settlement paid out in behalf of Johns-Manville. Among other things, this furnished clear proof that Travelers—a firm that sold Johns-Manville sixteen million dollars' worth of primary product-liability insurance between 1947 and 1975—had been placed on notice at least a dozen years before Borel as to what its potential liabilities might be with respect to asbestos disease.

IN January of 1978, there had been a surprising development in the lawsuits that Kilbourne and Kazan had filed against Dr. Kent Wise in behalf of Rudkin and other workers from the company's Pittsburg plant. This occurred when Wilbur L. Ruff, of Treasure Island, Florida, who had worked for Johns-Manville for forty-four years and had been manager of the Pittsburg plant between 1963 and 1966, gave a sworn statement to Wise's lawyer, Marrs A. Craddick, of Walnut Creek. Ruff said that when Wise was hired to replace his father as part-time physician at the Pittsburg plant, in 1962, it had been with the understanding that he would be responsible only for conducting preëmployment and periodic physical examinations of employees, and would not be responsible for taking or evaluating their chest X-rays. Ruff went on to say that Dr. Smith and Clifford Sheckler, who had become the corporate manager of industrial health, came out to Pittsburg once or twice a year to review the chest films that were taken in connection with periodic physicals, and that Dr. Wise was under instructions not to discuss either the films or any other chest findings with the workers he examined.

"Do you know whether, in fact, abnormal chest findings ever were discussed with any employee of the Johns-Manville plant by Mr. Sheckler, Dr. Smith, or the industrial-relations manager while you were plant manager there?" Craddick asked.

"Not while I was plant manager," Ruff replied.

Craddick then asked if there had been "a policy in the company at that time not to talk to the employee about chest findings, findings that suggested asbestosis, pneumoconiosis, or mesothelioma."

"Yes, it was policy," said Ruff, who repeated his testimony in a deposition that was taken a few weeks later.

The policy described by Ruff soon became known as Johns-Manville's hush-hush policy, and it proved damaging to the company's defense in the Pittsburg-plant cases. Within a few months, Judge Martin Rothenberg, of the Contra Costa County Superior Court, rejected Johns-Manville's claim that the only recourse of Pittsburg-plant employees who had developed asbestos disease was to collect damages through workmen's compensation. In his decision, he declared that Johns-Manville had "chosen to conceal the danger from its employees rather than invest funds into finding a safe way of handling the product," and that it could only be assumed that the company had done so because it was less expensive to pay workmen's-compensation benefits than to provide a healthy workplace. The ruling made headlines in Contra Costa County, for by this time some eighty former workers at the Pittsburg plant or their survivors had filed ten-million-dollar punitive-damage lawsuits against the Johns-Manville Corporation on charges of fraudulent concealment and negligence. In August of 1979, however, an appellate court reversed Rothenberg's decision. Kilbourne then appealed the matter to the California Supreme Court, and after nearly a year the Supreme Court reversed the appellate court's decision with a five-to-two ruling, which enabled the Pittsburg-plant workers to proceed with their cases.

In September of 1980, Judge Rothenberg instructed Kilbourne and Kazan to select a sample case for a trial whose outcome would determine the issue of liability in the rest of the eighty-odd cases. As a result, the law-

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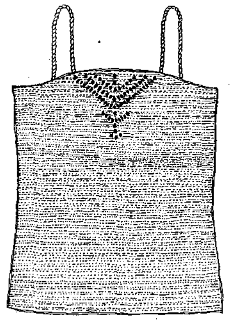
suit of a worker named Bob Alan Speake was severed from the others. A frail sixty-six-year-old man who was suffering from asbestosis, Speake had worked for thirty-three years at the Pittsburg plant and had retired in 1975. His complaint, like the complaints of his colleagues, accused Johns-Manville of negligence for having exposed him to harmful amounts of asbestos dust and for having failed to inform him that he had developed asbestos disease. However, he, like many of his fellow-workers, had been a pack-a-day cigarette smoker, and the prospect of trying his suit as a precedent was not without risk for Kilbourne and Kazan.

As for the Johns-Manville people, the dismal prospect of having to explain away Wilbur Ruff's testimony about the company's hush-hush policy regarding asbestos disease was compounded by their knowledge that Travelers, which had defended Johns-Manville in the vast majority of asbestos lawsuits since Borel, would soon announce that its sixteen million dollars in primary comprehensive and general-liability insurance was exhausted, and that it would no longer assume the company's defense. Because of this impending development, Johns-Manville had brought a declaratory-judgment action in the Superior Court of the State of California for the City and County of San Francisco against the Home Insurance Company, of New York City—the holder of its first layer of excess insurance between 1963 and 1976—and against twenty-five other insurance companies, which carried the rest of Johns-Manville's estimated six hundred million dollars' worth of primary and excess coverage. In the suit, which was filed in March of 1980, Johns-Manville claimed that Home and the other defendants owed it indemnification, because they were insurers of record during the period in which victims of asbestos disease had been exposed to its insulation products. For their part, many of the defendant carriers—there would ultimately be twenty-seven of them—asserted that they were required only to indemnify Johns-Manville when asbestos disease was diagnosed or otherwise became manifest during the insurance-policy period. In addition, Home alleged that Johns-Manville had fraudulently concealed the asbestos health hazard from Home's underwriters, who would not have issued excess coverage if they had known about the problem. There was supreme irony in this. Not only was Home's complaint against Johns-Manville similar to that of thousands of sick and dying workers who were suing the company but its action might well force Johns-Manville to disclose additional evidence of fraudulent concealment, and, no matter which of them won or lost the lawsuit, both might have to defend against that evidence. To avoid the prospect of such legal gridlock, the presiding judge in the various suits and countersuits, granting a motion by Johns-Manville, issued a protective order that allowed all the parties in the cases to restrict the information or materials they disclosed.

During the early winter of 1981, the impending announcement by Travelers served to intensify a siege mentality that had been developing among high officials of Johns-Manville, who had realized for nearly a year that they would sooner or later face the prospect of going to trial on their own in cases that Travelers would normally have defended or settled out of court. (The fact that Johns-Manville was running out of primary insurance, together with a tremendous increase in the number of asbestos claims that were filed during 1980, had already caused the company's independent accountants to issue a qualified statement regarding its financial position for that year.) All things considered, therefore, Speake's lawsuit could scarcely have been severed for trial at a worse time as far as Johns-Manville was concerned. It was the first lawsuit to come to trial of approximately a thousand such lawsuits that had been brought in various parts of the country as Johns-Manville factory employees succeeded in penetrating the exclusive-remedy shield of workmen's compensation by suing for fraud. Thus, Speake held the potential of making Johns-Manville vulnerable to lawsuits that could conceivably be brought by tens of thousands of workers whom it had employed over the years in its asbestos mills and manufacturing plants. Indeed, it challenged the very underpinnings of workmen's compensation itself—a system that had been erected largely for the purpose of protecting American manufacturers and their insurers from common-law actions brought by injured workers. Speake



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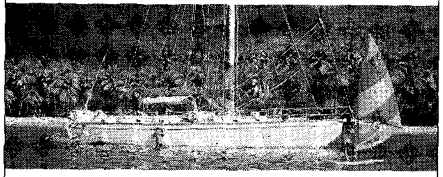

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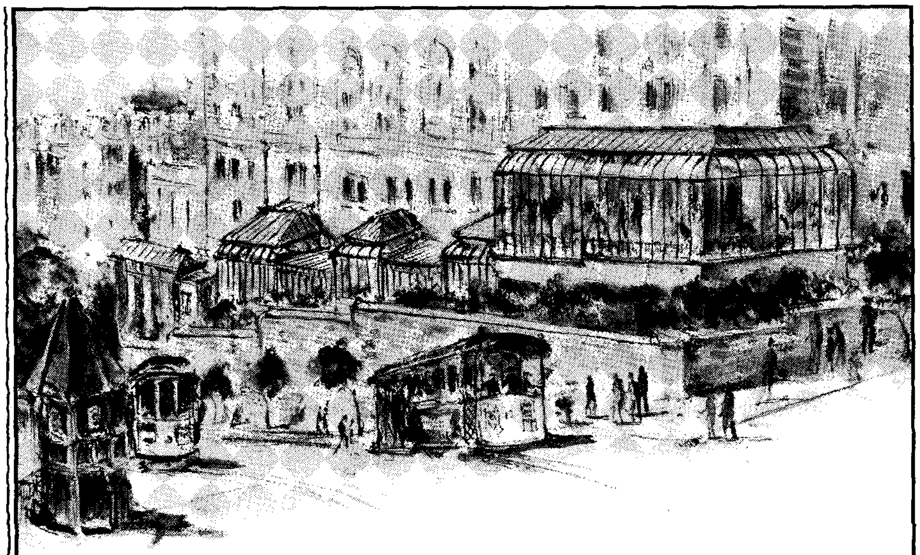
was also important for the basic ethical reason that had preoccupied Kilbourne from the beginning: ten years after Borel, Johns-Manville was finally, and for the first time, on trial for essential wrongdoing committed by its officials for half a century in covering up the asbestos health hazard.

WITH so much at stake, it was not surprising that the process of discovery in Speake provided some fascinating new disclosures. The first of these came about as a result of Kilbourne's desire to use the Sumner Simpson letters as proof that Johns-Manville had suppressed information about asbestos disease as early as the nineteen-thirties. Under the ancient-documents rules that exist in most states, documents more than thirty years old are presumed to be authentic. However, California had never adopted such a rule, so under the California evidence code the contents of the letters that Vandiver Brown had written and received, and his signature as well, would have to be independently verified before they could be introduced as evidence. Since Brown, Simpson, and most of the other people who figured in the correspondence were presumed to be dead, and since Raybestos-Manhattan was not a defendant in the case, this promised to be a difficult task. In February of 1981, Kilbourne telephoned Karl Asch, who had unearthed the Sumner Simpson papers, to talk with him about the problem. During their discussion, Kilbourne recalled that several of Brown's letters had referred to payment of the salary and expenses of an industrial hygienist named Otto L. Binder, whom Johns-Manville had listed as dead in its reply to one of Kilbourne's interrogatories. Since Binder would have been an ideal person to verify Brown's correspondence, Kilbourne said in passing to Asch that it was too bad he had died. Asch replied that Binder was not dead but was living in retirement in Indiana, and that he had been deposed a year or so earlier in some cases that had been brought in the Eastern District of Pennsylvania.

The fact that Binder was alive—indeed, Johns-Manville was paying him a pension—was soon overshadowed by the disclosure that another figure from the nineteen-thirties who the company had claimed was dead was also alive. This was none other than Vandiver Brown himself—a chief architect of the asbestos cover-



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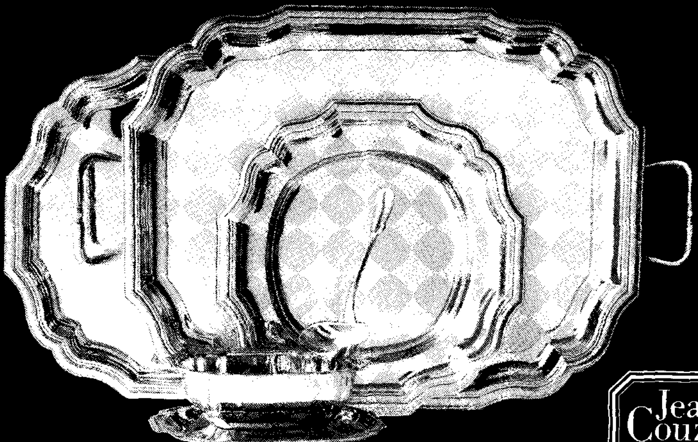

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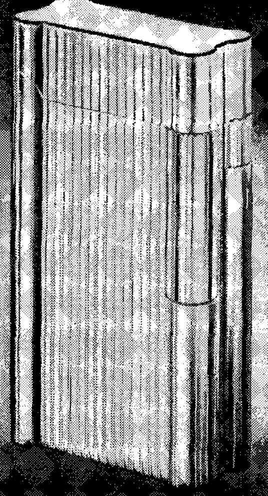

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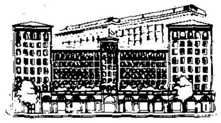

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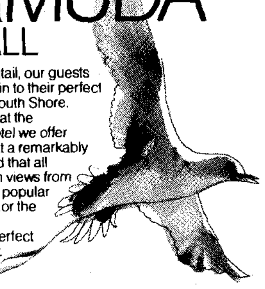

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up—who had retired suddenly from Johns-Manville in 1951, at the age of fifty. In April of 1981, Aaron H. Simon, an attorney with the Los Angeles firm of Greene, O'Reilly, Agnew & Broillet, was having difficulty in persuading the presiding judge in some asbestos cases he was handling to admit the Sumner Simpson correspondence in evidence, largely because he lacked independent authentication of Vandiver Brown's signature. For this reason, Simon hired an investigator to go to the Appellate Division of the New York State Supreme Court to get a copy of Brown's signature on the oath of office he had taken upon being admitted to practice in New York, and to find out where he had died, in order to get a copy of his will. In carrying out this mission, the investigator discovered that Brown was not dead, as Johns-Manville had repeatedly claimed in its answers to interrogatories, but was still on the New York State Bar Association's list of member attorneys and was receiving its monthly journal at his home in Waco, Texas, where he was born and had grown up.

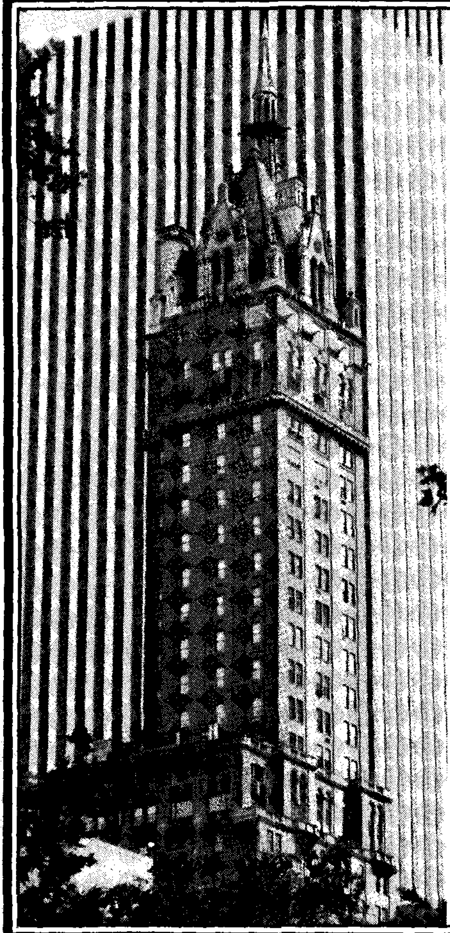
When Simon called Brown in Waco, the telephone was answered by a maid. She said that Brown was in Scotland, where he spent a good part of the year, and she gave Simon the telephone number of a man named Tom M. Oliver, Jr., who turned out to have been appointed Brown's legal guardian by the court of McLennan County, Texas, in 1975, when Brown, then seventy-four, was found to be a person of unsound mind. Oliver later told members of the plaintiffs' bar that Brown, the son of a well-to-do cotton broker, was a chronic alcoholic, who had become senile as a result of an arteriosclerotic condition of the brain. Before any of this became known, however, Kilbourne, who had learned from Kazan by way of Simon that Brown was alive, made a motion in Speake v. Johns-Manville for the issuance of a subpoena to depose Brown in Scotland. The news of Kilbourne's motion caused consternation among lawyers at Moore, Clifford, Wolfe, Larson & Trutner—the Oakland law firm that was one of two firms defending Johns-Manville in the Speake case—and an attorney was immediately dispatched to Edinburgh, where he hired counsel to resist the taking of Brown's deposition. Other Johns-Manville attorneys were sent to Waco, and obtained evidence of Brown's incompetence, which they presented to the judge in the Speake case. While in Waco, they also made an agreement with the First National Bank of Waco, the guardian of Brown's estate, under which they would defend Brown and the bank against any lawsuits that might be brought against them.

Early in May, Fred Baron, the Dallas litigator who had gained prominence in the Tyler case, called a meeting of the innermost council of the Asbestos Litigation Group to decide how to deal with the matter, and a compromise was worked out between the asbestos litigators and David Britt, a lawyer for the First National Bank of Waco: Baron would be permitted to interview Brown in Edinburgh and determine for himself whether or not Brown was competent to give a deposition, and if Baron came away convinced that Brown was competent Britt would litigate the issue in the United States, rather than in Scotland.

In July, Baron flew from Dallas to Edinburgh with his wife, Lisa Blue, a psychologist and lawyer, who was then a prosecutor in the district attorney's office of Dallas County. When they arrived for the meeting with Brown, at the office of Johns-Manville's solicitor, Baron was ushered into an inner office and handed a lengthy report from a psychiatrist, which stated that Vandiver Brown was incompetent and not capable of giving a deposition. He returned to the anteroom, where his wife was waiting, and sat down beside her to read the report, and just then two men walked in from the street. "There were only three chairs in the anteroom, and when the younger of the two men sat down, Lisa immediately got up and gave her seat to the older man," Baron recalls. "He was a remarkably handsome and distinguished-looking man, with soft, clear skin and thick white hair that was immaculately combed. He wore a starched striped shirt with a red bow tie, a green tweed sports coat, and a perfectly pressed pair of tan slacks, and when he sat down in Lisa's chair he asked her if she would like to sit on his lap. At that point, Lisa smiled at him and asked if he was by any chance from Waco, and he started to sing 'Deep in the Heart of Texas.' It was Vandiver Brown, of course, and he was singing 'The stars at night are big and bright' for the second time when the solicitor came out to take him and his companion into the inner office. About five minutes later, the attorney representing Johns-Manville ushered me into the office, where I sat across from Brown at a large conference table. I had been told that I could not ask him any questions about the asbestos litigation, so I started out by asking him how he was doing today, and he said 'Fine.' I then asked him if he had ever worked in New York City, and he told me he didn't remember. When I inquired if he had ever worked for Johns-Manville, he gave me the same answer. He did, however, remember that he had gone to school in Waco. When I asked him if he was an attorney, he said, 'I think I was, a long time ago.' I then asked him about his home outside Edinburgh, and he turned to his companion and asked if anything had happened to the house. By that time, it appeared obvious to me that Brown was either totally out of it or not willing to respond to my questions. Since I saw the futility of going on with the interview, I soon ended it. When I got back to my hotel, I wrote out a long and detailed report about what had taken place, which was later circulated among members of the Asbestos Litigation Group. After returning to Texas, I requested David Britt to produce any documents relating to Johns-Manville which might be in Brown's house in Waco, but after making a thorough search Britt reported that none could be found."

Subsequent investigation by asbestos litigators revealed that Brown was believed to have retired suddenly from Johns-Manville when it was discovered that he was a homosexual, for that precluded him from further advancement within the company. At that time, it is said, he severed all ties with the company, and left all his papers and memorandums behind. Whether the whole truth of the matter will ever be known is doubtful, because he died in Waco on September 2, 1983, at the age of eighty-two.

IN addition to claiming that key officials such as Otto Binder and Vandiver Brown were dead, Johns-Manville had consistently frustrated orderly discovery in the California lawsuits, according to Kilbourne, by ignoring notices to produce documents, denying the existence of requested documents, and refusing to admit the authenticity of documents that were produced and of the signatures



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affixed to them. To speed things up, Judge Coleman Fannin, who had replaced Judge Rothenberg as the presiding judge in the Speake case, appointed a retired jurist to hold separate evidentiary hearings to authenticate hundreds of documents that Kilbourne and Kazan had assembled for the upcoming trial. These hearings began in the spring of 1981 and continued through the summer and early autumn. Johns-Manville's attorneys argued against the admission of almost every piece of evidence—particularly the letters of Vandiver Brown—claiming that company officials had no idea where the letters had come from and no way of authenticating Brown's signature. However, Johns-Manville finally admitted the authenticity of Brown's signature on some thirty letters and memorandums when it learned that a handwriting expert retained by Kilbourne would testify that the signatures were identical to a duly acknowledged signature that Brown had affixed to a 1943 deed in his father's probate.

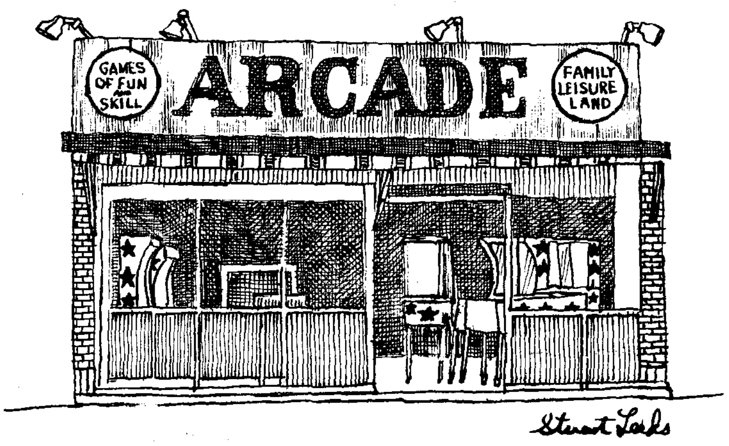
The trial of Bob Alan Speake v. Johns-Manville Corporation et al. got under way on November 30, 1981, and was litigated over the next nine weeks. In their opening statements, Kilbourne and Kazan told the jury that Manville had known about the health hazards of asbestos since the early nineteen-thirties and had deliberately and fraudulently concealed this knowledge from Speake. On Manville's behalf, Weyman Lundquist, the senior trial attorney for the other law firm representing Manville in Speake—the San Francisco firm of Heller, Ehrman, White & McAuliffe, of which Secretary of Defense Caspar Weinberger had been a member for many years—denied the allegation of fraudulent concealment, claiming that the company had been in the forefront of research into asbestos disease. Lundquist also claimed that Speake's health problem stemmed chiefly from his forty years of cigarette smoking, and that he had voluntarily assumed health risks when he went to work at the Pittsburg plant.

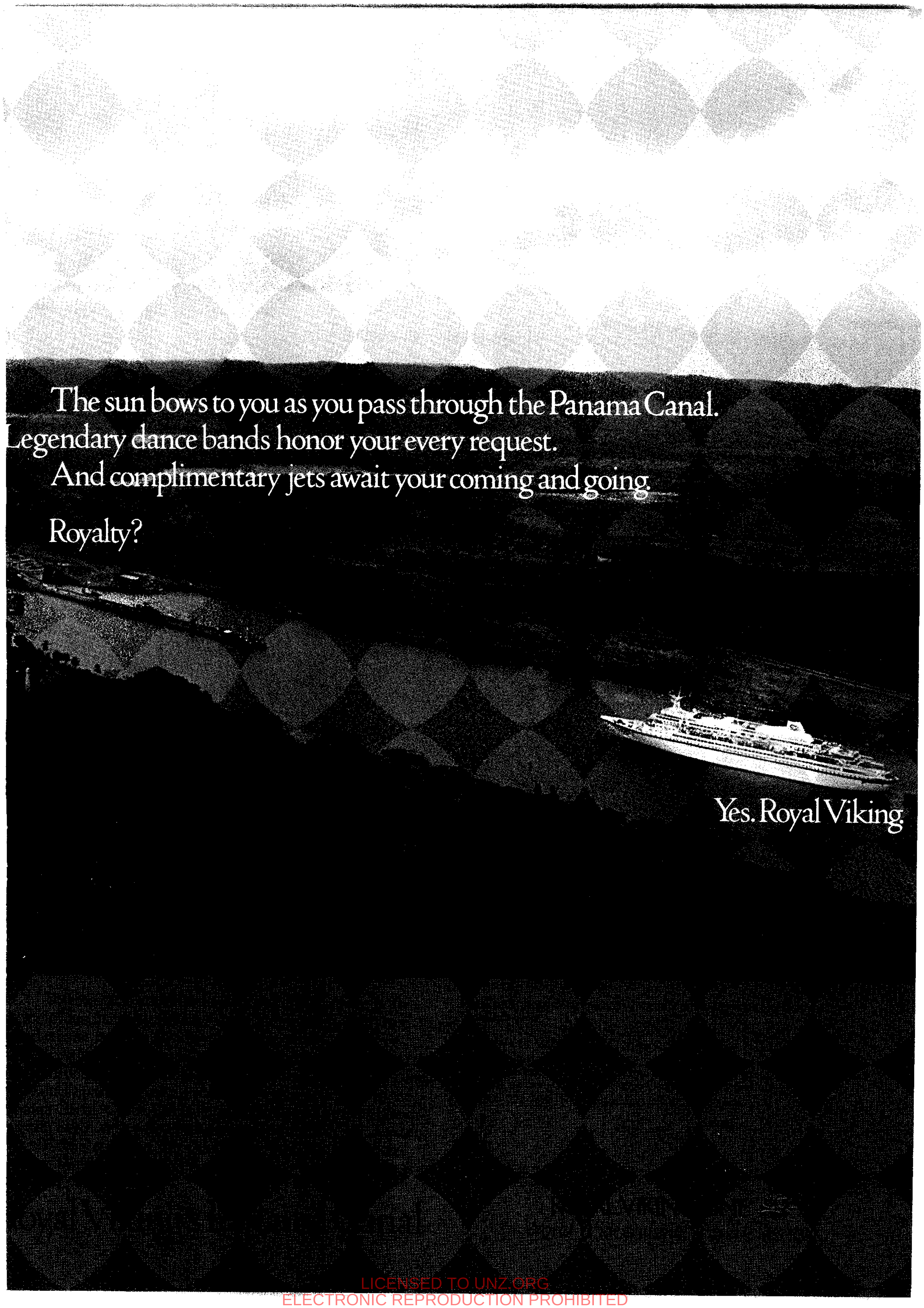
During the trial, Kazan brought out the fact that chest X-rays of Speake taken in 1961 and 1964 showed signs of lung scarring but Speake was never informed of this finding. Kazan then introduced in evidence Dr. Smith's 1949 memorandum in which he acknowledged that employees suffering from asbestosis "have not been told of this diagnosis, for it is felt that as long as the man feels well, is happy at home and at work and his physical condition remains good, nothing should be said." Kazan followed this up by introducing a letter that Smith had written in 1959, after reviewing the chest X-rays of longtime employees at the Pittsburg plant. "Of the thirty films reviewed, twenty-one showed positive evidence of pulmonary disease," Smith wrote. "Five films were doubtful and four showed no evidence of disease. I know that you understand the very serious financial exposure to the company should these cases progress to the point of disability." Additional damaging information about Johns-Manville's corporate medical policy was presented when Dr. Wise testified that he had first met Dr. Smith in 1963, when Smith came to the Pittsburg plant to review chest X-rays, and that Smith had informed him then that he was not to counsel any workers who might develop occupational lung disease. (Kilbourne and Kazan later agreed to dismiss their complaint against Wise, explaining that the chief reason he had been kept as a defendant in the case was that they suspected that some Manville executives might try to blame him for the hush-hush policy.)

Damaging as Smith's letters and Wise's testimony appeared to be, Kilbourne and Kazan were disappointed by the limits on the evidence they were allowed to present at the trial. Judge Fannin, who was said to be opposed to the assessment of punitive damages, refused to let them introduce the Sumner Simpson letters, on the ground that since Johns-Manville had already admitted that asbestosis lawsuits were brought against it in the nineteen-thirties the letters were cumulative. For the same reason, the Judge also refused to allow them to introduce the minutes of the 1933 directors' meetings concerning the eleven asbestosis claims that were settled in that year, as well as evidence about forty-two lawsuits that were brought in 1934 and 1935 by workers who had developed asbestosis at Johns-Manville's plant in Waukegan, Illinois.

When it came time for the defense attorneys to present Johns-Manville's case, they called two radiologists, who testified that Speake's pulmonary problems were caused by his cigarette smoking. They later called Dr. Paul Kotin, who upon reaching the age of sixty-five, five months earlier, had retired as Johns-Manville's senior vice-president for health, safety, and environment. Kotin, who had rarely been called as a witness by Johns-Manville since Ronald Motley used the Sumner Simpson letters and the contract-unit disease claims to rebut his previous testimony, proceeded to tell the jury that he had gone to work for Johns-Manville because "it was a company that had demonstrated through the years a great responsibility, a commitment—a leading-edge commitment, if you will—to the principles of occupational medicine." During cross-examination, Kotin was asked by Kazan whether an asbestos manufacturer had a duty to educate its customers in the safe and proper use of its products, and he responded with the same analogy he had used when Gillenwater cross-examined him in the Starnes trial, almost five years earlier. "Well, you know, it can no more insure responsible use than the Bayer aspirin company can guarantee that I don't take a hundred aspirin tablets to commit suicide," he said.

One of the highlights of the Speake trial occurred when Lundquist called John A. McKinney, Johns-Manville's chairman and chief executive officer, to the witness stand to testify to the character and the integrity of the company he directed. A distinguished-looking silver-haired man of fifty-eight, who was earning four hundred and thirty-six thousand dollars a year, McKinney was a native of Texas and had gone to work for Johns-Manville as a patent attorney in 1951, shortly





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after graduating from Georgetown University School of Law. He had become the firm's chief executive officer in 1977, and had since spent at least half his time on the company's asbestos-litigation problems, devising and directing legal strategy with a staff of in-house attorneys, and meeting with legislators on Capitol Hill in an effort to enlist their support for the enactment of a federal compensation system that would relieve Johns-Manville of some of its legal and financial burdens. McKinney, who had never before appeared in court to testify in an asbestos trial, told the jury that there was "a sense of family and a sense of mutual concern" at Johns-Manville, which he had always found very satisfying. He went on to extol Lewis H. Brown, who had been the president of Johns-Manville between 1929 and 1946, and chairman of the board and chief executive officer from 1946 until his death, in 1951, for inspiring "reverence" among his employees during the early nineteen-thirties by directing the adoption of such progressive policies as the forty-hour workweek, periodic physical examinations for all workers, and safety programs designed to create a healthy workplace. Thanks to Judge Fannin's refusal to allow Kilbourne and Kazan to introduce into evidence the minutes of the early directors' meetings, McKinney was not required to answer questions about any of Brown's less reverential achievements, such as advising the company's directors in 1933 that eleven pending asbestosis lawsuits could be settled out of court provided that the attorney for the plaintiffs could be persuaded not to bring any more cases against the company.

In his closing argument to a jury of nine women and three men, Kilbourne said that Johns-Manville had exhibited a "conscious disregard" for Speake's right to know that if he worked long enough at the Pittsburg plant he would get sick. Kazan, in his, said that Johns-Manville should be made an example, "so that other companies will know what they did for the past fifty years was unacceptable and they can't get away with it." As for Lundquist, he told the jury in his closing argument that Speake was one of fourteen thousand plaintiffs who had lawsuits pending against Manville, and that if a huge award was made to him it might set a precedent that could ruin the company.

The Speake jury deliberated for twenty-six hours before returning a general verdict against Johns-Manville. Its members awarded Speake a hundred and fifty thousand dollars in compensatory damages but refused to give him punitive damages. As might be expected, Kilbourne and Kazan were elated to win a landmark case demonstrating that Manville could no longer expect to be protected by the exclusive remedy of workmen's compensation, but they were disappointed by the amount of the compensatory award, and by the jury's refusal to grant punitive damages. Kilbourne reacted to the verdict with special bitterness, calling it a victory for Johns-Manville. Now a white-haired man of sixty, with a mustache and a goatee, he had been working on Speake and his other asbestos cases for six and a half years. During that time, he had seen forty-nine of his asbestos clients die while their lawsuits were pending, and he had developed a profound contempt for Johns-Manville's tactics of obfuscation and delay. His contention that the case for fraudulent concealment had been severely handicapped by Judge Fannin's refusal to admit in evidence the Sumner Simpson letters and the minutes of the 1933 directors' meetings was powerfully reinforced when one of the jurors declared that she felt they had not been shown sufficient proof of deliberate intent on the part of Johns-Manville to conceal the asbestos hazard from Speake.

In spite of Kilbourne's disappointment, the Speake case marked a threshold in asbestos litigation, for as the information he had unearthed between 1978 and 1982 was added to the crushing weight of incriminating material that had already been amassed as proof of the company's past misconduct juries across the nation began to award punitive damages against Johns-Manville. Indeed, as a direct result of all this discovery, punitive damages totalling more than six million dollars were awarded against the company in ten of some sixty-five asbestos cases involving Manville that were tried in 1981 and during the first half of 1982. What seems ironic is that what had come to light was undoubtedly just a small part of the history of neglect and deceit on the part of the nation's asbestos manufacturers. Thousands of documents had either disappeared or been discarded years before. Among the records that had disappeared were those of some thirteen hundred experimental studies of asbestos and other hazards that had been

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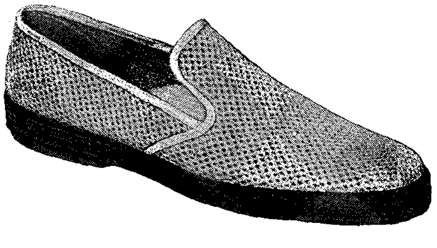

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conducted at the Saranac Laboratory over three decades, along with virtually all the papers that had been presented at the Seventh Saranac Symposium—a week-long meeting on pulmonary dust disease that was held in late September of 1952. Unlike the proceedings of six previous meetings, those of the Seventh Symposium were never published, supposedly for budgetary reasons. Some observers believe, however, that they were suppressed because of pressure from asbestos manufacturers and the insurance industry. If they had not been, the meeting might well have gone down in history as the first major conference ever held on the biological effects of asbestos—an honor that went to the New York Academy of Sciences' conference that was organized twelve years later by Dr. Selikoff. Still, it is known that the Seventh Saranac Symposium was attended by more than two hundred medical doctors, research scientists, state and federal public-health officials, insurance-company executives, and manufacturers, who came from far and wide, and that they heard startling disclosures concerning asbestos disease from some of the leading participants in a drama that had then been unfolding for more than twenty years. From England came Dr. E. R. A. Merewether, Medical Inspector of Factories in Great Britain, who had conducted the first epidemiological study of asbestosis, back in 1928, and who now presented data that strongly linked asbestosis and lung cancer. From the Medical College of South Carolina came the celebrated pathologist Kenneth M. Lynch, who, back in 1935, had been the first to suggest such a link. And from the National Cancer Institute came Wilhelm C. Hueper, who had warned for nearly a decade that asbestos was a potent carcinogen. (Hueper, who was later among the first to warn of the dangers of DDT, was a scientist of remarkable foresight, as can be seen from a stunningly accurate appraisal of the coverup of occupational cancer that he had published in a 1943 bulletin of the American Cancer Society. "Industrial concerns are in general not particularly anxious to have the occurrence of occupational cancers among their employees or of environmental cancers among the consumers of their products made a matter of public record," Hueper wrote. "Such publicity might reflect unfavorably upon their business activities, and oblige them to undertake extensive and expensive technical and sanitary changes in their production methods and in the types of products manufactured. There is, moreover, the distinct possibility of becoming involved in compensation suits with extravagant financial claims by the injured parties. It is, therefore, not an uncommon practice that some pressure is exerted by the parties financially interested in such matters to keep information on the occurrence of industrial cancer well under cover.")

Other participants in the 1952 symposium who had played or would play major roles in the asbestos saga were Dr. Vorwald, the director of the Saranac Laboratory, who had organized the meeting; Dr. Lanza, formerly of the Metropolitan Life Insurance Company; Dr. Smith and Hugh M. Jackson, of Johns-Manville; Professor Philip Drinker, of Harvard University's School of Public Health; Dr. W. Clark Cooper, of the United States Public Health Service; Ivan Sabourin, counsel for the Quebec Asbestos Mining Association; Dr. Paul Cartier, the director of that association's clinic at Thetford Mines; Dr. Daniel C. Braun, the medical director of the Industrial Hygiene Foundation, Inc.; Dr. Harriet L. Hardy, of the Massachusetts General Hospital; and Willis G. Hazard, the industrial-hygiene specialist of Owens-Illinois. Also present, and thus privy to early knowledge of the carcinogenic hazard posed by asbestos, were representatives of such major insurance companies or organizations as Travelers; the Employers Mutual Liability Insurance Company, of Wausau, Wisconsin; the American Mutual Liability Insurance Company and the Liberty Mutual Insurance Company, both of Boston; the Lumbermen's Mutual Casualty Company, of Chicago; the New Jersey Self Insurers Association; and the State of New York Insurance Fund.

If a significant number of the fifty-odd medical doctors who attended the Seventh Symposium had spoken out or had insisted that its papers and discussions be made public, they might well have blown the lid off the asbestos coverup and saved thousands of lives, untold pain and suffering, and millions of dollars. Instead, with the exception of the wonderfully outspoken Hueper, too many of them remained silent, and the conference simply marked the nadir of a year in which the asbestos industry, with the tacit approval of its insurers, successfully suppressed information about the most important industrial carcinogen the world has ever known. Furthermore, in the years to come a number of these physicians—among them Dr. Cooper, who testified for the defendants in the Tomplait and Borel trials—saw fit to take active roles in support of the asbestos industry. As for those who chose silence, it might be said that they were acting in the time-honored tradition of the American medical profession, whose members, by and large, continue to avoid speaking out on important matters of occupational and environmental health, out of élitist deference to an old-boy network that precludes them from voicing criticism either of one another or of a private-enterprise system that, by contaminating homes, hospitals, schools, and other buildings with asbestos, and befouling drinking-water supplies with toxic chemicals, has created public-health problems of staggering magnitude for the entire nation. In any event, because of timidity on the part of doctors, obtuseness on the part of public-health officials, and complacency on the part of Congress, the asbestos industry not only was allowed to conduct a highly successful coverup of medical and scientific knowledge about asbestos disease all during the nineteen-fifties, sixties, and early seventies but also, because of the Bankruptcy Code, has been allowed to continue doing business as usual to this very day. Indeed, only the uncompromising commitment of Dr. Selikoff, who has worked tirelessly for more than twenty years to make his findings known, and the dedication of Ward Stephenson and the plaintiff lawyers who, following his lead, carried on after Borel have brought to light the truth about the suffering wrought by the asbestos industry upon tens of thousands of unsuspecting workers in the United States—a truth that, like the truth Émile Zola wrote about in "J'Accuse," had for years been buried underground, where, growing and gathering force, it had been waiting to burst forth.

—PAUL BRODEUR

(This is the second part of a four-part article.)

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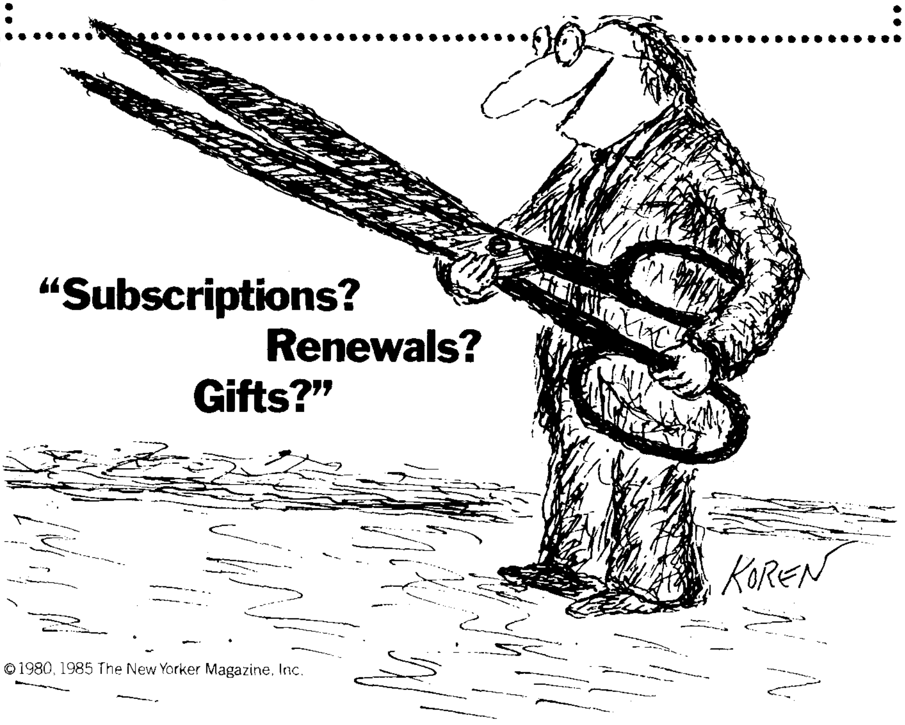
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THE CURRENT CINEMA

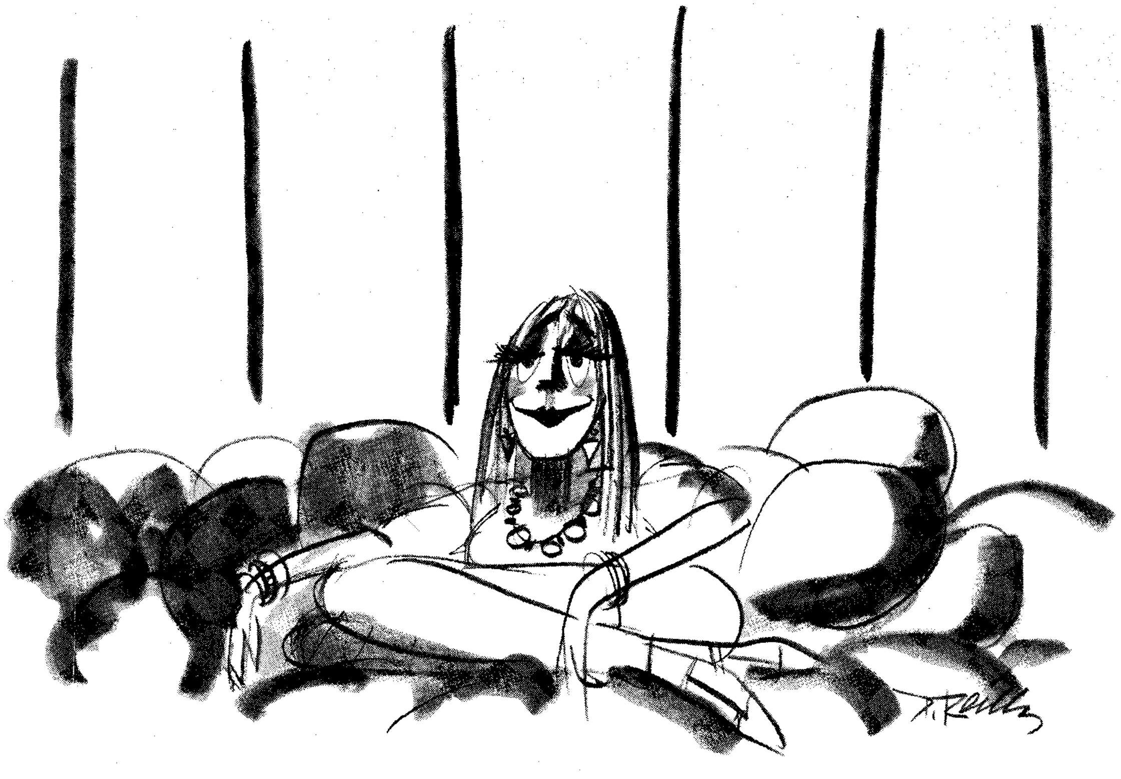
Extremes

THE first thing that charmed me about "The Shooting Party," which is set in the English countryside in the autumn of 1913, was the swiftness and wit with which we are introduced to the characters. A large number of landed gentry, aristocrats, servants, gamekeepers, beaters, and loaders have gathered at the Nettleby estate for a three-day shoot, and the camera, flitting like a butterfly, hovers over a couple of people talking about someone else, whirls over to that person in conversation, and from there to whoever is being talked about, and so on. This Alan Bridges film isn't merely based on Isabel Colegate's 1980 novel; it's a film of the novel, a transcription in the literal sense—"the arrangement of a composition for a medium other than that for which it was originally written." It's a novel acted out for us. But by devices such as those hovering, whirling introductions, and by the quality of the performances, and the economy and fleeting elegance of the whole production, Alan Bridges carries the Masterpiece Theatre approach to the level of art.

The novel is highly compressed: it's a set of variations on the end-of-an-era theme, with dozens of characters in less than two hundred pages. Colegate sets them up, one by one, in a few sentences—deft, sneaky details of their backgrounds—and then lets them speak for themselves. The dialogue is sly and pithy. At times, it's reminiscent of Oscar Wilde, and the adapter, Julian Bond, hasn't tried to improve on it. Whole scenes have the Colegate verbal rhythms intact, and a viewer can bask in the beautiful bounce and precision of the dialogue, which is spoken by the kind of cast you assemble when you fantasize about who should be in the movie of a novel you've just read. It's a dream of a cast.

James Mason is the aging baronet Nettleby, the host, whose wife (Dorothy Tutin), we are given to understand, used to be a gregarious creature, always on the go. Now she's content to bicker with the head gardener, keep an eye on her grandchildren, and play a killer game of bridge. Nettleby is the central figure—the embodiment of the values that are already frayed and will disintegrate in the war to come. And James Mason, in his final movie (he died last July, at seventy-five), goes out in glorious style. His Nettleby is a supremely civilized man; he sees other people for what they are, but he also sees the reasons for it. He speaks harsh words to only one person, the cold fish Lord Hartlip (Edward Fox), whom he reprimands for "not shooting like a gentleman," and he does so in a tone of pained regret. Mason uses a mild, aging man's voice in this role, and his querulous, cracked inflections make us smile. His face and, especially, that plangent voice are so deeply familiar that when we see him in a role that does him justice there's something like an outpouring of love from the audience to the man on the screen.

Mason validates our feelings: he uses his own physical deterioration for the role, yet he never turns into a grand old man or indulges in a quaver that isn't a funny, integral part of the country squire who's conscious that he's ineffectual—that he's losing his grip. In a scene midway, Nettleby, who breeds game birds on the estate so that he can provide his guests with these splendid shooting sprees, is confronted by a protester, played by John Gielgud, who marches into the middle of the shoot carrying a placard that says "THOU SHALT NOT KILL," and the old squire and the old zealot—each, in his own way, disaffected—converse. The scene is right out of the novel, but Mason and Gielgud are like soft-shoe artists; they bring suavity to their teamwork, with Mason matching his melancholy warble to Gielgud's melodious whine. They're even more hilarious than Gielgud and Ralph Richardson were on the stage in "No Man's Land," because that was just two great actors sparring; here the two can tease each other from inside the characters they're playing. They're so amused they're almost laughing—they're in actors' heaven. And when, toward the close of the film, Mason has a scene that's overladen with the possibilities of pathos and grandeur—it's a scene with Gordon Jackson as a poacher whose cussedness the squire has come to



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respect—he pulls back; he underplays, magically. No one could accuse James Mason of not acting like a gentleman.

Bridges, whose 1982 film "The Return of the Soldier" opened here in February, has a special gift for these evocations of a world seen in a bell jar, and now, with Geoffrey Reeve as producer and Fred Tammes as cinematographer, he has refined his techniques. A late bloomer (he was born in 1927), Bridges goes beyond being pictorial and literary. He sharpens the novel's wry observations on the Edwardian era and at the same time infuses a sensuous sweetness into the material. The film isn't Chekhovian, exactly (though Mason is); it's more like a distillation of what's alluring about the Masterpiece Theatre productions—wonderful actors, given the chance to speak a celebrated writer's lines. And it's brought off with a sovereign ease. On TV, a novel like "The Shooting Party" would be a six-part series, full of longueurs, and shorteurs, too. Here, after we've met the key members of the party, the movie puts us (as the novel does) among actions and conversations going on simultaneously. And as the events become more intense Bridges picks up the pace and tightens the film's emotional hold on us. Many of his performers are veterans of the prestigious series shows with which he has long been associated, but actresses such as Cheryl Campbell (who was Vera Brittain in "Testament of Youth") and Judi Bowker (who was in "The Glittering Prizes") make a stronger impression in their brief screen time than they do in their much longer stints on TV—maybe because the pictorial setups are held so long on TV that we tire of them, and the images don't stay with us. As Lady Aline, the flighty, adulterous wife of Edward Fox's Lord Hartlip, who disgraces himself in the shoot, Cheryl Campbell is at one moment a pert-faced, nosy gossip, and at the next a tantalizing sensualist being caressed by her own long, wavy blond hair. It's a quicksilver performance that recalls Joan Greenwood at her most seductive. And Judi Bowker as the guileless Lady Olivia, the wife of thickheaded Lord Lilburn (Robert Hardy), looks at the camera with a direct gaze that makes her seem infinitely beautiful. When the tall, slim young barrister Lionel Stephens (Rupert Frazer) declares his love for her, you think, Of course—how could he look into her

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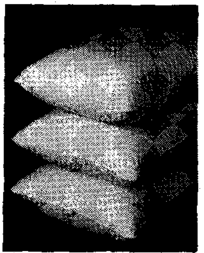

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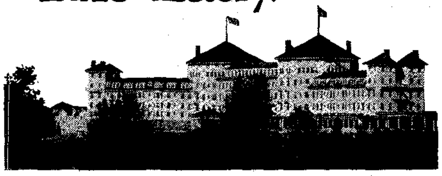

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clear eyes and not imagine depths of mystery?

The movie has a few misdirected elements. One is a small subplot involving a love letter that Stephens writes to Olivia and then tears up and tosses into a wastebasket, from which it's retrieved by a young footman, who copies it and gives it to the servant girl he's courting. (She's a prosaic soul and disapproves of it as tosh.) Somehow, this episode comes through confusingly. And there's also some fuzziness about the identity of several of the characters. Though it doesn't really matter which of the assembled people are related to the Nettlebys, we don't know that at first, and I kept wondering which of them were the Nettlebys' children. It turns out that they have only a son, who is a diplomat and is out of the country, and that his wife, Ida (Sarah Badel), is the mother of all four grandchildren, including the flirtatious nineteen-year-old Cicely (Rebecca Saire) and the ten-year-old Osbert (Nicholas Pietrek), who has a pet mallard named Elfrida Beetle. We—and several of the guests and servants—fear for Elfrida when she's loose on the grounds on the third day; that's the day the shooters, having dispatched hundreds of pheasants, rabbits, and woodcocks, go after ducks.

Does it seem arch or frivolous that the characters fuss over a little boy's possible loss of a pet duck in a movie that's ostensibly about the Twilight of the Empire? Actually, it's Elfrida and all the other singularities that form this vision of an aristocracy reduced to playing games of death. Yes, we can see that the advancing line of beaters and the line of shooters with their loaders behind them are like lines of soldiers, and we recognize that these expensively got-up people, who regard their class as the flowering of the social order, and the British Empire as the best there has ever been, are on the edge of oblivion. Once again, a shooting party is being used as a symbol for the greater violence to come. But Colegate's tone is lightly self-mocking. (The moviemakers didn't find a way to adapt one of the elements that link with the Gielgud character and round out Colegate's conception. She sees the pheasants as fed and protected from predators, then cast forth from their Eden and "forced to take to the air reluctantly—heavy birds, a flight of more than a few feet exhausts them—forced up and out to meet a burst of noise and a quick death in that bright air.")

What keeps the picture from abstractness and overfamiliarity is that it's full of the English affection for gentle lunacy. Gordon Jackson plays the poacher as Colegate described him: "His conversational manner had always tended towards the histrionic." Aline Hartlip, who sees herself as passion's plaything, also manages to cadge some money from her hostess. The wide-eyed Olivia, never having had a romantic thought about Lionel Stephens, responds to his avowal of love—and the news he brings that their souls knew each other before—with the sudden discovery that, yes, she loves him, too.

The movie is about the tight fit of the jacket worn by the Hungarian count (Joris Stuyck) and the way Nettleby refers—fondly—to the immensely rich Sir Reuben Hergesheimer (Aharon Ipalé) as "the Israelite." It's about the traditions, loyalties, and idiosyncrasies that bind a social order. It's about the ceremonies of dressing for dinner and becoming part of the procession to go into the dining room and being seated at the table, where conversation is a form of theatre. Most of all, it's about how, given the chance, actors can take us beyond what we read in a book. Edward Fox, a master of twisted psyches and gnarled vocal tones, can make us feel the loneliness inside the miserable, arrogant Hartlip, who has nothing to be proud of except his reputation as the best shot in England—a reputation that Lionel Stephens, without giving the matter much thought, challenges. And Dorothy Tutin wraps the role of Lady Minnie Nettleby around her like a dowdy old sweater. (I enjoyed even the unplanned things, like the way Robert Hardy's fatuous Lord Lilburn recalls Nigel Bruce as the stocky, expostulating Dr. Watson, and the way Gielgud from some angles is a ringer for I. B. Singer.)

"The Shooting Party" isn't likely to appeal to the teen-agers at the shopping mall. What would they make of the characters' allusions to Ruskin and to George Meredith's "The Egoist," which have been retained from the novel, or of a remark (Julian Bond's addition) that Lady Minnie makes to Lady Aline—"I've always thought your men more Ibsenite than Chekhovian"? (I'm not sure I know what to make of that, either.) There's probably no more preciously literate

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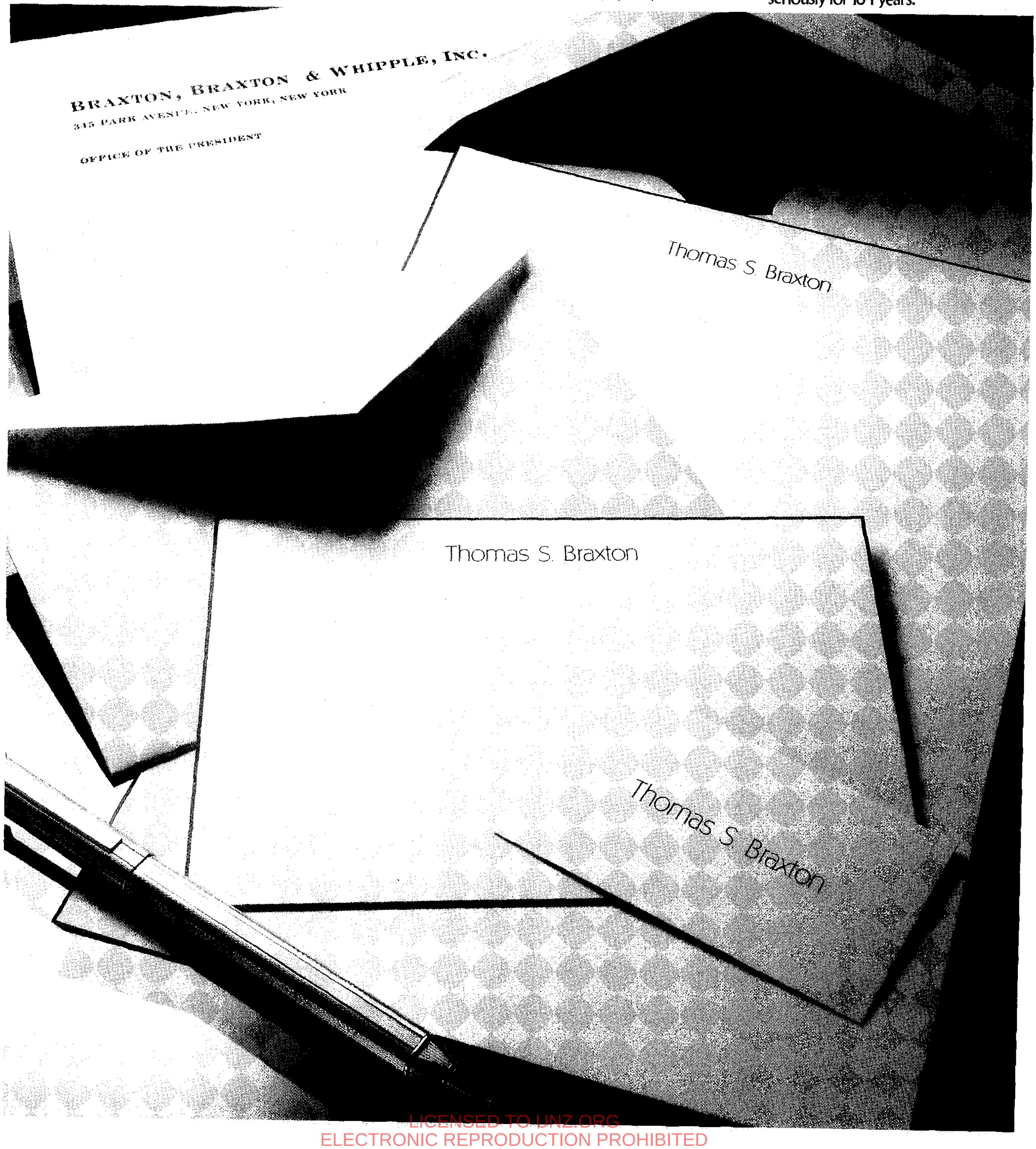

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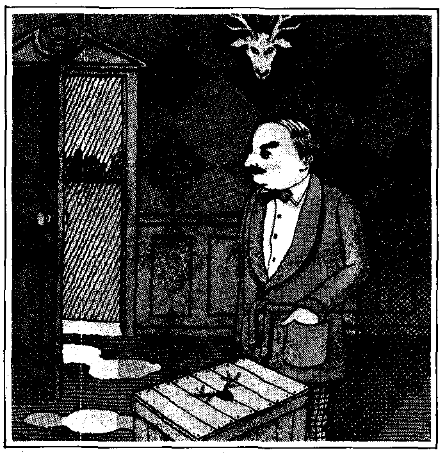
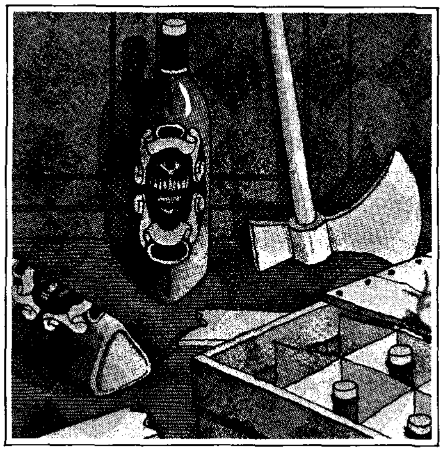
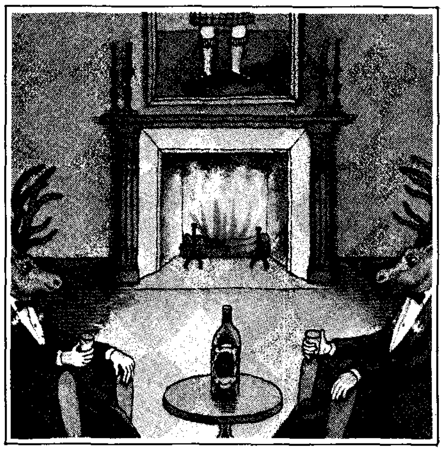
THE CASE OF ·THE· 'AON BRAICH'



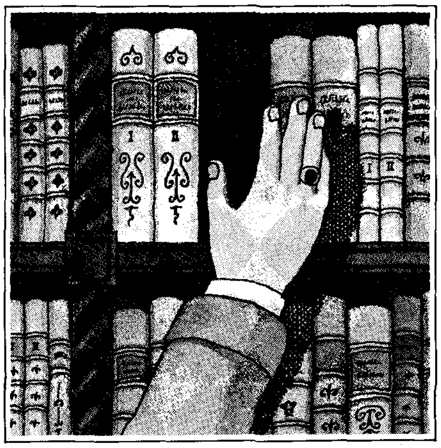
One rainy evening, a man with Gaelic on his breath delivered to my door a case of Glenfiddich. "Aon Braich," he murmured. No one here by that name, I mused. When I looked up, he had disappeared.



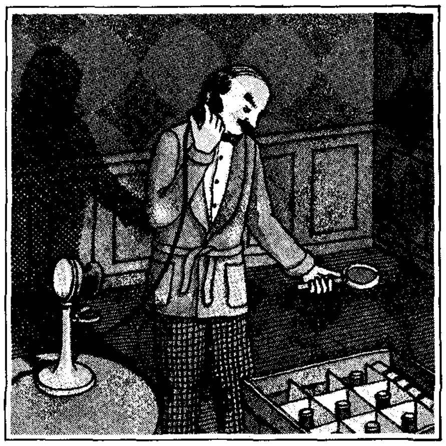
Upon cracking the cache of Glenfiddich with my Scottish Rites hatchet, I found each bottle of this distinctive malt whisky to be of triangular shape. Evidently, there were more sides to this story still.



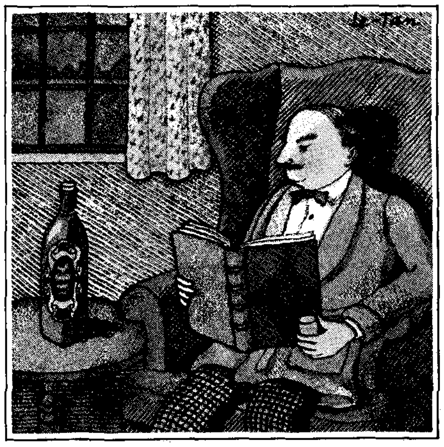
Examining the label, I detected a most intriguing clue: Glenfiddich is Gaelic for 'Valley of the Deer.' Had this peculiar charade been nothing more than a cleverly staged stag party invitation?



A sudden revelation struck me like a belt from Savile Row. Perhaps the peat-stained pages of MacTurf's 'Scotch On The Lochs' would hold the explanation. I reached for my volume – but the book was gone!



It was then my friend MacIntosh rang. "Aon Braich!" he intoned. That strange name again! "I'd have returned the book myself, but with this downpour..." Then I saw my MacTurf tucked 'midst the malts.



A newly-marked page revealed that it was the Glenfiddich that was 'aon braich,' or single malt. One sip confirmed its singular character. Rarely had a case led me to such a splendid solution.

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scene in movies than the explanation of how Elfrida Beetle got her name, but the scene is consciously, whimsically silly. This is one of the rare movies that can be said to be for an educated audience without that being a putdown.

"RAMBO: FIRST BLOOD PART II" explodes your previous conception of "overwrought"—it's like a tank sitting on your lap firing at you. Jump-cutting from one would-be high point to another, "Rambo" is to the action film what "Flashdance" was to the musical, with one to-be-cherished difference: audiences are laughing at it. More specifically, they're laughing at its star and progenitor, Sylvester Stallone, who comes across as a humanoid Christ figure with brown leather skin and symmetrical scars. Rambo has been programmed with (a) homoeroticism, (b) self-pity, (c) self-righteousness, (d) sweat, and (e) an insatiable need to be crucified over and over. He has a sour pout on his face, and he's given to deep, enigmatic utterances, such as "To survive a war you have to become war."

According to "Rambo," we didn't lose the war in Vietnam—the United States soldiers weren't allowed to win it. And when it ended, our government made a deal to pay "war reparations" of four and a half billion dollars to North Vietnam for the return of our captured men, then reneged on the deal and tried to forget all about the prisoners of war. Rambo goes in and brings a bunch of survivors out. Of course, he has his moments of pleasure: he has bits of his flesh sliced off by a sadistic, Nazi-like Russian (Steven Berkoff), he's spread-eagled on an electrified rack by torturers who think they can make him talk, he's branded in the face with a red-hot knife, he's immersed in pig glop while hanging crucifixion style. And, boy-oh-boy, what this killer Christ does to those Commies! He shoots them with his bow and arrows—arrows with explosive points that send them up in fireballs.

The jungle greenery is very lustrous; the cinematographer, Jack Cardiff, gets something of the effect in color that Josef von Sternberg got in black-and-white in a studio-made jungle in his 1953 "Anatahan"—it's as if each leaf had been oiled and buffed. And with the bare-chested Stallone slipping through these leaves the effect is mighty odd: you're supposed to be intoxicated by his lumpy muscles. The way he's photographed, he's huge—our national palooka—and the small Vietnamese in their ill-fitting uniforms don't look as if they had a muscle (or a brain) among them. They just stand around stupidly, waiting to be blown up; you may want to yell at them "Take cover!" But who could be heard above the soundtrack alerting you to watch for the next killing, and the audience's catcalls and the giggly cheers for Rambo's Zen marksmanship and his gorgeous fireballs? (The film reaches climax when two boats crash in flames.) The director, George P. Cosmatos, gives this near-psychotic material—a mixture of Catholic iconography and *Soldier of Fortune* pulp—a veneer of professionalism, but the looniness is always there. Rambo's old Green Beret colonel calls him "a pure fighting machine," yet, like Rocky, Rambo always has to have bigger guys in his movies—real bruisers, like the Russian giant here—to beat him up. We mustn't forget that his namesake is Arthur ("A Season in Hell") Rimbaud: trying to explain Rambo to a corrupt official, the colonel says, "What you choose to call hell, he calls home."

What Sylvester Stallone chooses to call a movie is a wired-up version of the narcissistic jingoism of the John Wayne–Second World War pictures. Its comic-strip patriotism exploits the pent-up rage of the Vietnam vets who feel that their country mistreated them after the war, and it preys on the suffering of the families who don't know what happened to their missing-in-action sons or brothers, fathers or husbands. A Sylvester Stallone hit movie has the same basic appeal as professional wrestling or demolition derbies: audiences hoot at it and get a little charged up at the same time.

David Morrell, whose novel "First Blood" was the basis of the first Rambo picture, has written the novelization of this sequel, from the screenplay by Stallone and James Cameron. It's a love letter to Rambo's weaponry—his nasty serrated knife and his bow and exploding arrows. In the author's note at the front of the book, Morrell tells us who "created" the weapons and where we should write to order them. I can hardly wait for my set to arrive.

—PAULINE KAEL

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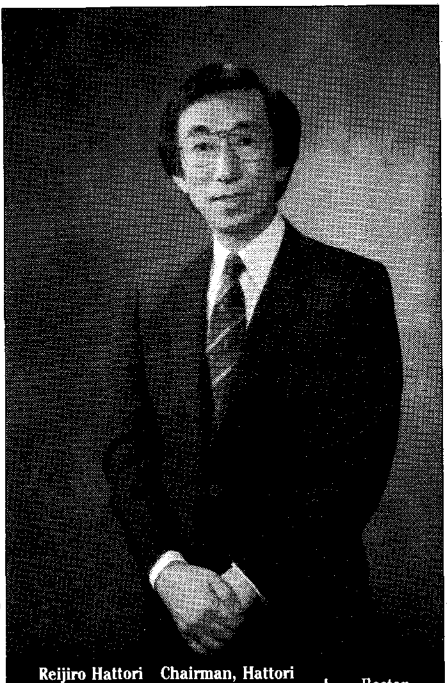
The road ahead for higher education in this state appears, to this student, to be a blique one.—*Daily Beacon, newspaper of the University of Tennessee.*

Agreed.



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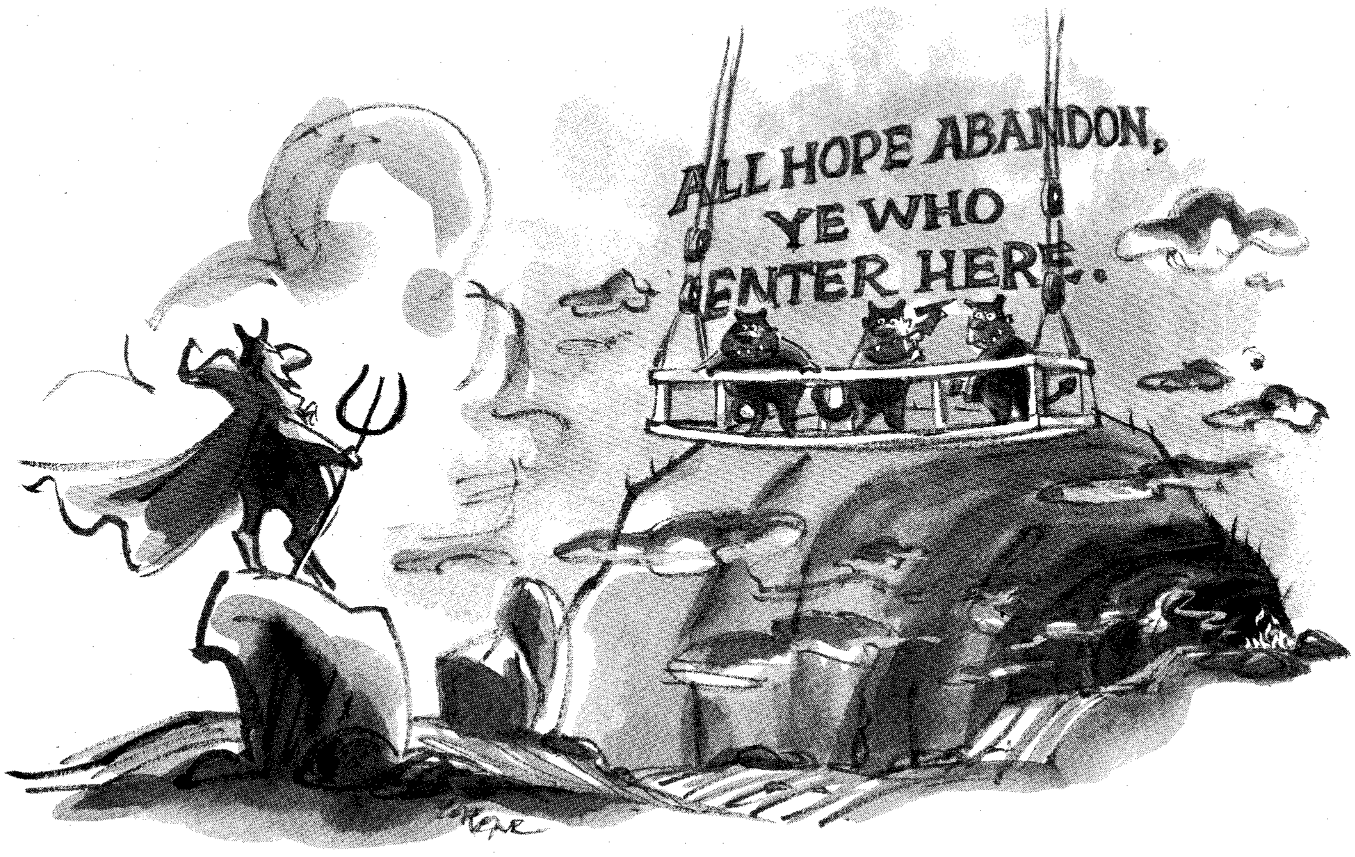
JONATHAN REYNOLDS' "Fighting International Fat," at Playwrights Horizons, is an attempt at satire (target: evangelism, a plum ripe for the picking) which doesn't work, partly because Mr. Reynolds lets his comic ideas run away with him—not that there are enough of them to sustain the play's two acts in any case. International Fat Fighters, a group under the leadership of one Rosalind Gambol, is dedicated to losing weight by "obsessional self-denial;" when the play opens, the members are rehearsing their confessional material, much of it as disgusting and lurid as possible, for a television talk show whose m.c. is about to audition them. The m.c., Shep, is unimpressed by the candidates but more than impressed by Rosalind. The immediate sexual interlude that follows is very funny, and he changes his mind. Changes it for a few minutes, that is—until the entrance of the slim and beautiful D. Raleigh Bell (in the person of the slim, beautiful Lisa Banes), formerly a Rosalind Gambol disciple but now an equally dedicated advocate of weight loss by surgery, who is determined to win away Miss Gambol's acolytes. The dramatist outdoes himself in his description of the thirty-some operations Miss Bell underwent to remove unwanted tissue from her person. Another, far flakier sexual interlude follows with the eager Shep. The two weight-loss experts proselytize the disciples, who move first one way, then the other. And that's all there is. Nevertheless, in spite of Mr. Reynolds' skimpy material and his self-indulgence—he never brings his script into focus or allows his points to register—there is true originality here, and humor, too. Much of the humor is in the weight-losers, my favorite of them being a peculiar Canadian loner, the only man in the bunch, who is given a very droll performance by Stephen Ahern. I also enjoyed Jessica Walter, as Rosalind; Ann McDonough, as an uncommonly drab weight-loser (and loser generally); and B. Constance Barry, Ruth Jaroslow, and John Gabriel, in the other roles. The elegant setting—a room in an elegant New York hotel—was designed by Tony Straiges and lighted by Frances Aronson; the appropriate costumes were designed by Rita Ryack. David Trainer directed.

MUCH of the fun of Herb Gardner's "I'm Not Rappaport," at American Place, lies in the expert comic performances of Judd Hirsch and Cleavon Little as a couple of old men who share a bench in Central Park, where the action takes place. Mr. Hirsch's character, Nat, is a fiery, defiant Jewish radical—a former Marxist and a liar and impersonator. Mr. Little's character, Midge, is the quiet, canny black superintendent of an apartment house nearby, who gets the news that he is about to be retired. Nat springs into action, posing as Midge's lawyer and his union representative, and threatening a public hearing and picketing and the rest of the activist paraphernalia, over Midge's weary protests. Nat drives Midge crazy with his non-stop talking, but the bond between the two men is strong, and when Nat brings out marijuana the results are engaging. These characters, it must be said, are synthetic, as are all the other characters; the actors are what give them life and conviction. The play has no plot, but it does


ALL HOPE ABANDON, YE WHO ENTER HERE.

"It just occurred to me that it would be even more hellish if we left them just a little bit of hope."

not lack for incidents, somewhat casually assembled. A young thug (Jace Alexander) sees Midge home for a few dollars' protection money and turns rough when Nat objects to the shakedown; Nat's put-upon daughter (Cheryl Giannini) tries and fails to persuade him to live with her family in Great Neck; and a drug dealer called the Cowboy (Ray Baker) tries to collect a debt from a pretty young woman (Liann Pattison) and beats her up when he discovers that her funds are insufficient. The show runs smoothly, under Daniel Sullivan's direction, and the setting, designed by Tony Walton and lighted by Pat Collins, is impressive. Although Mr. Gardner's thoughts on aging alone in this city, which are meant to provide a sombre undertone to the play, don't come to much, his jokey dialogue and jokey ideas are frequently amusing. His is indeed a practiced hand, and if his purpose is to entertain he has accomplished it—yet his accomplishment is not nearly as interesting as Mr. Reynolds' misstep. —EDITH OLIVER

●

SOCIAL NOTES FROM ALL OVER

[*From the Santa Fe New Mexican*]

CERRILLOS, N.M. (AP)—The bride wore a pink satin gown and matching pink cowboy boots as she rode a white horse to her New Year's Eve wedding. The ring bearer was a 140-pound Great Dane named Goliath.

Lisa Goodwin, owner of the K&G Spanish Arabian Horse Ranch, and Terry Owen were married in the gazebo in the village square of this community south of Santa Fe on Monday.

Goodwin's white Arabian horse, Supreme, and Owen's white Arabian stallion, Komuste, also got married.

"Our lives have been horses and the land," said Goodwin. "Besides, Supreme and Komuste fell in love as Terry and I did, quickly and with conviction. It only seemed fitting."

Supreme, who has been bred to Komuste, will foal in March.

The Rev. Jack Day officiated at the brief ceremony, attended by five bridesmaids wearing Navajo attire, five groomsmen wearing cowboy hats, chaps and leather jackets and a crowd of friends and family.

After the ceremony, they rode to Mary's Bar for a reception to the tune of "Blaze of Glory" and "Welcome to My World," played on an electric steel guitar.

●

7 P.M. (2) "60 Minutes": American clergymen and citizens who have provided shelter for illegal Salvadoran aliens; the energy-efficient Colorado home of an anti-nuclear activist couple; a reprise of an interview with Vladimir Horowitz, violinist.

—*TV listing in the Times.*

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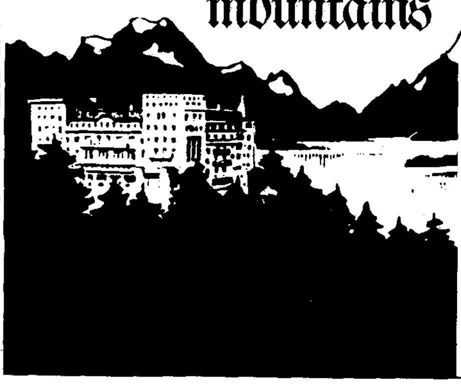

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BOOKS

Memory Palaces

FOR nearly four decades, Jorge Luis Borges has been delivering lectures in public, even though, being blind, he must speak and quote from memory. Seven talks he presented in the summer of 1977 at the Teatro Coliseo in Buenos Aires were taped without his permission, sold as pirated records, and printed in cut and mangled form; an approved version, edited with his help, was published in Mexico in 1980 and now appears in English, under the title "Seven Nights" (translated from the Spanish by Eliot Weinberger; New Directions; $14). These lectures make an enchanting small book, more loose and open in texture, more affectionate and frank in tone than the gnomic written criticism collected in "Other Inquisitions" and in the Borges reader edited by Emir Rodriguez Monegal and Alastair Reid, who has provided a sensitive, informative introduction to "Seven Nights." The seven topics will not be strangers to those readers who have already trod the narrow, circling paths of the Borgesian universe: in literature, "The Divine Comedy" and "The Thousand and One Nights;" in religion, "The Kabbalah" and "Buddhism;" and, in his most personal vein, "Nightmares," "Poetry," and "Blindness." His own blindness, he tells his audience, is "modest"—"Modest, because it is total blindness in one eye, but only partial in the other. I can still make out certain colors; I can still see blue and green. And yellow, in particular, has remained faithful to me. I remember when I was young I used to linger in front of certain cages in the Palermo zoo: the cages of the tigers and leopards. I lingered before the tigers' gold and black. Yellow is still with me, even now." A color he does *not* see is black, the color of night. "I, who was accustomed to sleeping in total darkness, was bothered for a long time at having to sleep in this world of mist, in the greenish or bluish mist, vaguely luminous, which is the world of the blind."

His blindness descended gradually. "That slow loss of sight . . . began when I began to see. It has continued since 1899 without dramatic moments, a slow nightfall that has lasted more than three quarters of a century." Mr. Reid's introduction states that by 1946, when Borges was dismissed from a suburban library post and first turned to lecturing as a means of livelihood, he was already "unable to read a written text." Borges seems to put the crucial moment somewhat later: "In 1955 the pathetic moment came when I knew I had lost my sight, my reader's and writer's sight." Prior to that moment, he had managed to read with the passion and rapture of a cabalist. Attracted to the labyrinthine and duplicitous, to texts as enigmatic as nightmares and as infinite as mirrored mirrors, Borges the reader "had always imagined Paradise as a kind of library."

His own mind has become, in his blindness, a library, whose volumes he consults with a charming freedom of association, returning always to the allied sensations of enchantment—"Without enchantment, the rest is useless"—and of horror, of what Mr. Reid spells out as "*asombro* or *sagrada horror*, 'holy dread.'" Captured within the friendly vessel of Borges' discursive voice ("talking not to all of you, but rather with each one of you"), the genie of dread is less alarming than in the abruptly dizzying spaces of the poetry and fiction. An elderly stoic speaks in comforting accents: "A writer, or any man, must believe that whatever happens to him is an instrument; everything has been given for an end." In the role of teacher, Borges has tried to teach his students "how to love literature, how to see literature as a form of happiness." In his cosmology, literature replaces the ordering principle that used to be called Fate or Providence: "We are made for art, we are made for memory, we are made for poetry, or perhaps we are made for oblivion. But something remains, and that something is history or poetry, which are not essentially different." Bibliophilia satisfies his own deep needs: "I am a hedonist reader; I look for emotion in books." Will the foreseeable fu-

Bernard Schoenbaum

"Monday morning, Fred. Go for it."

ture yield another reader so passionately content within the echoing library walls? Listening, via the printed word, to these relaxed and yet highly explicit discourses, one realizes that never again will there be a mind and memory stocked just this way, with such benign and extensive curiosity, such patient and expectant attention to ancient texts. Bent upon conveying treasure, Borges reveals himself as a treasure.

“The Memory Palace of Matteo Ricci,” by Jonathan D. Spence (Viking; $19.95), also leads us to reflect upon the immensity and perishability of minds, each of which constructs in the course of a lifetime a unique store of knowledge. Ricci was one of the first Jesuit missionaries to penetrate China, and he carried with him not only the Christian good news but European clocks, crystal mirrors, eyeglasses, and maps; a mental treasure of Ricci's, and one with which he hoped to beguile the mandarins into friendliness and receptivity, was the system of memorization which European scholars of the Middle Ages and Renaissance had inherited from antiquity. The system called for the attachment of each piece of information to a decoration, tableau, or piece of furniture within a visualized “memory palace,” which could be as simple as a single room or as complex as an entire town, containing thousands of rooms. Purportedly, this technique of mental storage was invented by the Greek poet Simonides, who, having luckily departed a hall that forthwith collapsed upon a large party of revellers, was able to recall where each had been sitting, and thus could identify the disfigured bodies. Pliny, Quintilian, and the author of “Ad Herennium” described and extolled the method, and twelve centuries later Thomas Aquinas advocated “corporeal similitudes” to fix devotional sequences. The idea of memory systems lurks behind Giotto's iconography, the highly structured afterworlds described by Dante, and the procedures of Ignatius Loyola's “Spiritual Exercises.” When Matteo Ricci was a Jesuit student in the early fifteen-seventies, “De Arte Rhetorica,” by Cypriano Soarez, was used to inculcate memory training. The adult Ricci was, according to Mr. Spence, capable of “running through a list of four to five hundred random Chinese ideograms and then repeating the list in reverse order, while Chinese friends described him as being able to recite volumes of the Chinese classics after scanning them only once.” Toward the end of his life, after decades of living remote from the libraries of the West, he was able to recall and translate into Chinese numerous paraphrases of Epictetus and, almost word-for-word, Planudes' life of Aesop.

In 1596, to curry favor with Lu Wangai, the governor of Jiangxi, whose three sons were preparing for the advanced government examination, Ricci composed a brief book on the art of building memory palaces. On the basis of the four ideograms that he used by way of example, and of four religious illustrations he contributed a decade later to a collection of Chinese calligraphy and graphics entitled “The Ink Garden,” Mr. Spence has constructed a beautifully intricate, boldly nonchronological portrait of the erudite missionary of whom the Encyclopaedia Britannica states, “Probably the name of no European of past centuries is so well known in China as that of Li Ma-tou (Ricci Matteo).”

Mr. Spence, an English-born historian and, since 1965, a member of the Yale faculty, has published five other distinguished and original works on aspects of Chinese history. In each book he has sought, with a wide learning carried lightly, to rescue the Chinese from our hazy and stylized notions of them. He is a demon researcher with the flair of a poet; out of the vast mounds of perennial Chinese documentation he manages to sift the surprising, humanizing detail. In “The Emperor of China” (1974) he took the rare personal threads in the voluminous imperial records left by the sixty years' reign of the Manchu Emperor K'ang-hsi and wove a remarkably smooth-flowing and affecting apologia, in the Emperor's own words. In “The Death of Woman Wang” (1978) he brought to life an obscure and impoverished county of northern China, merging a local history of T'an-ch'eng, in Shantung Province, with the short stories of P'u Sung-ling, who wrote in an adjoining county. A certain woman Wang, who deserted her husband and then returned and was killed by him, found her way into a magistrate's memoir; out of discrete fragments of P'u Sung-ling's fiction Mr. Spence not only composed background music for the woman Wang's sad, dim tale but assembled her stream-of-consciousness at the moment of her murder—his most daring work of collage. Even

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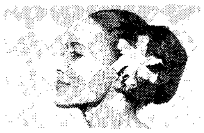
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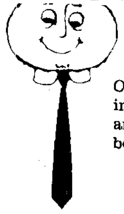

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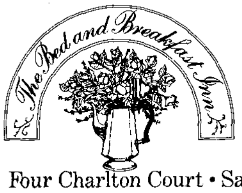

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such a relatively straightforward historical study as "The Gate of Heavenly Peace" (1981) explores its period, the last, turbulent century of Chinese history, through the lives and personal testimony of individuals—intellectuals and writers—on the edges of the political stage.

Matteo Ricci, too, was in a sense peripheral: he arrived at Macao at the age of thirty, and the following year he and Michele Ruggieri became the first Western missionaries allowed to live within China. Beset by bribe-hungry officials and hostile commoners, confronted by the all but impregnable indifference of the Buddhist bonzes and Confucian mandarins, Ricci edged his way north toward Peking and the Emperor Wanli, whose conversion was his fondest dream. By virtue of his dazzling intellectual accomplishments, which came to include a fluent literacy in Chinese, he did make a number of friends and a few converts among the ruling intelligentsia; but he never made his way into the Emperor's presence. In his closest approach, he was allowed, at one dawn audience in 1602, to prostrate himself before the empty dragon throne. Ricci did get to know, however, a number of the court eunuchs, through whose intermediacy he was permitted to give presents to the Emperor (three religious paintings, a large clock, a gilded breviary, prisms and hourglasses, a small harpsichord, a rhinoceros horn, and more), to contribute the lyrics to eight songs to be sung by court eunuchs accompanied on the donated harpsichord, and to reside in Peking. Wanli (whose own rather stalemated history was recently related by Ray Huang in his "1587: A Year of No Significance") appears to have been distantly amused by the missionaries: not willing to meet them, he had his court painters prepare portraits of the Jesuits in Peking and, glancing at the result, said merely, "They are *huihui*"—a xenophobic term generally used for the Muslims of western China. When informed, via his eunuchs, that the rulers of Europe "sometimes lived on the upper floors of their high buildings," the Emperor burst into laughter at such grotesque behavior. Ricci resided for nine years in Peking, and his rather early death, in 1610, at the age of fifty-eight, is ascribed by Mr. Spence to the strains of the hospitality he enjoyed there: "For Ricci the search for acceptance was now over, but exhaustion mounted under the press of social commitment and con-

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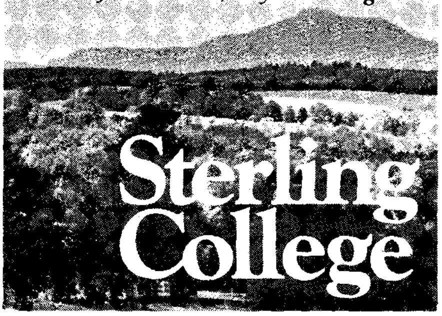

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stant intellectual exegesis. One Chinese contemporary noted that the Jesuit 'ate and drank exuberantly' on these occasions, and there is little doubt that the ceaseless social rounds took their toll." On his deathbed, as he sank into delirium, Ricci spoke of the Jesuit Pierre Coton, who had become the confessor of the King of France after Henry IV renounced Protestantism. "It is probable that in his last hours Ricci dreamed of being confessor to China's long-lived emperor . . . On May 11, in the evening, he sat up straight in bed, closed his eyes, and died."

The winding yet winning way in which this biography covers the ground of Ricci's life almost defies description. In brief, each of the four ideograms discussed in the book on mnemonics that Ricci presented to Governor Lu and each of the four religious illustrations contributed to Cheng Dayue's "Ink Garden" inspires an essayistic chapter that deals with an aspect of Matteo Ricci's life experience. The first ideogram, *wu*, representing war and construed by Ricci to show two warriors grappling, leads Mr. Spence to discuss: the violent atmosphere of Macerata, an Italian town in the papal domain where Ricci was born and grew up, amid blood feuds and banditry and war refugees from the north and rumors of Turkish attack on the Adriatic coast; the changes in military technology during Ricci's youth and the political turmoil in these times of Counter-Reformation; the Spanish siege of Antwerp, and the Ottoman defeat at the naval battle of Lepanto, and the disastrous battle between the Portuguese and the Moors at Alcazarquivir; the bustling, tawdry Portuguese settlements at Goa and Macao, where Ricci prepared for his mission to China; his impressions of China's indifferent warrior spirit and cruel corporal punishments; the competition among both missionaries and traders in the Far East; the Spanish slaughter of close to twenty thousand Chinese in the Philippines in 1603; and an incident in 1592 when a gang of youths invaded Ricci's compound in Shaozhou and was repelled by a bombardment of roof tiles, but only after Ricci suffered an axe cut and a twisted ankle, which ever after caused him to limp.

For another example, the third picture, showing an angel blinding the men of Sodom, leads Mr. Spence into fascinating disquisitions upon the moral and religious condition of Rome in the late sixteenth century, the same of Lisbon, the social makeup of Goa and Macao, Chinese slavery, Ricci's ambivalent attitude toward Chinese institutions, the Emperor Wanli's colossal tomb, eunuchs in China, drunkenness and misery and poverty and prostitution in Peking, Chinese accusations of sexual immorality among the Jesuits, Oriental toleration of homosexuality as contrasted with Christian abhorrence and Inquisitorial persecution, Loyola's proposed exercises in the correct contemplation of sin, and Ricci's Chinese translation of "Thou shalt not commit adultery" as "Thou shalt not do depraved, unnatural, or filthy things."

Each chapter pursues its theme with a similar wandering through the palace of fact. Mr. Spence's powers of correlation and connection are dazzling. Ricci's limp returns in a later chapter as a counterpart of Loyola's crippled right leg, the surgery upon which gave rise through the pain to a vision of Mary and her child that left his heart ever serene. These instances of lameness then suggest the limp that Dante seems to describe in the line from the "Inferno" "*Sì che'l piè fermo sempre era 'l più basso*" ("So that the firm foot was always the lower"). From these anatomical considerations Mr. Spence effortlessly hops to holy relics, to the relics Ricci carried with him, to Marian sodalities in China and elsewhere, to the Counter-Reformation cult of the Virgin, to the observation by a Chinese contemporary of Ricci's that "the image used for the Christian God is the body of a woman." Quite brilliantly, Mr. Spence shows that Ricci's fourth ideogram (*hao*, meaning "goodness" and represented by a servant girl with a child in her arms) and his fourth religious picture (Virgin and Child) converge and embody the same unsatisfied longing, a longing obliquely exposed by a misprint that Ricci allowed to remain in the woodcut of the Virgin—"*plena*" became "*lena*," a noun meaning "a woman who allures or entices." To convey so much information about a man, a religious fraternity, and two globally opposite cultures three hundred years ago by means of eight slender images and the themes that ramify from them is a rare tour de force, achieved by a scholar determined to refresh not only our knowl-

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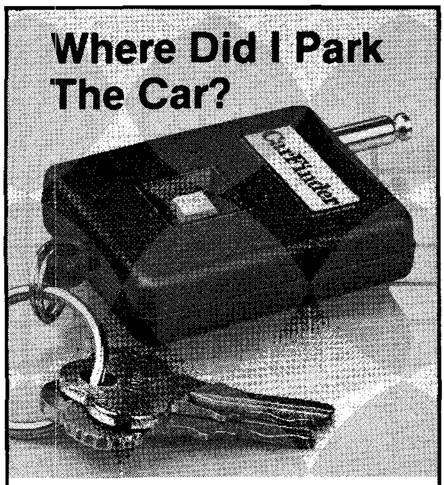

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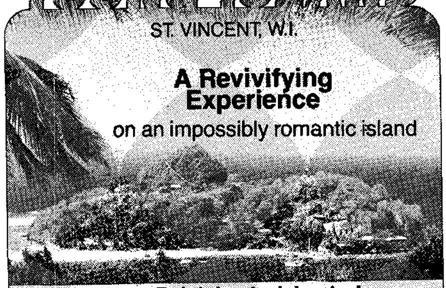

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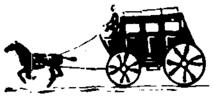

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edge of the past but the very forms in which history is presented.

Yet "The Memory Palace of Matteo Ricci" does not feel like a tour de force: it feels simply like a life explored from within, in terms of a mind exposed to certain influences, hardened in certain convictions, subject to certain shocks, and retentive of vast amounts of information now preserved only in libraries. Freed from the restraints of chronology, a life reveals its inner veins, its pattern of threads. The image of the memory palace returns rhythmically, as each ideogram is placed at one of the four corners of the reception hall, which is "suffused in an even light"—the light, it may be, of a Platonic heaven, or of the mind's delicately impassioned glow. The sense of mentally created spaces stretching extensively is eerie and majestic. The brief concluding chapter has the memory palace, about to be closed, yield a selective inventory of its contents:

> He smells the incense that curls up around his triptych as he places it reverently upon a pagan altar in the luxurious garden temple of Juyung. He tastes the homely food prepared for him by the poor farmers in their country dwelling near Zhaoqing. He feels the touch of cheek on cheek as the dying Francesco de Petris throws his arms around his neck.

If this is not quite as moving as the similar coda to Lytton Strachey's biography of Queen Victoria, perhaps being a queen is more poignant than being a missionary. A queen cannot help being one, but a missionary to some extent chooses his fate, his estrangement and loneliness. The cool and evenly lit halls of the memory palace as rebuilt by Mr. Spence do not contain the flame of Ricci's vocation and will, which drove him to his slightly absurd though courageous pose as a pseudo-mandarin—"a heavy, bearded man, in his robe of purple silk trimmed with blue"—importunate outside the Emperor's walls in Peking. But perhaps the shadowless atmosphere of the memory palace is the historian's way of suggesting that China quenched that flame, that Ricci's intricate mission ended in limbo. —JOHN UPDIKE

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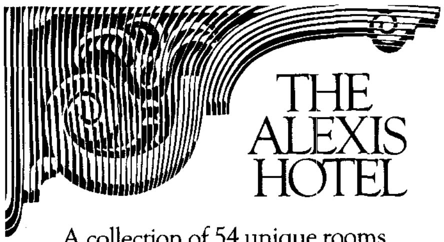

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